April 8 20-1/0 —
Judge Davis
— Reversed —

~~Reversed~~
~~Affd~~ — Reversed with a
~~Modify~~ — Modification —
Judge

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~417.~~ 201 cross appeal with = 283 =

CHARLES M. CONRAD, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED SEPTEMBER 12, 1872.

Page 4 of brief as to what must be found by the court — Oct 9 1872.

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No. 417.

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1 Circuit court of the United States, fifth circuit and district of Louisiana.

C. M. CONRAD, OWNER OF TEN LOTS OF ground, plaintiff in error,
vs.
UNITED STATES, DEFENDANTS IN ERROR. } No. 6039.

Motion and order to issue writ of error.—Extract from the minutes of December 23d, 1869.

November term, 1869.

NEW ORLEANS, *Thursday, December 23d*, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, dist. judge.

On motionof C. M. Conrad, defendant, in p'a p'a, and Billings & Hughes, of counsel for defendant in this case, and on suggestion that there is error, to the great damage of defendant, in the decree rendered in the above-entitled suit, being No. 7653 of the docket of the
2 district court of the United States for the eastern district of Louisiana, on the 3d day of Feb'uary, 1865, and signed on the 8th day of Feb'uary, 1865, condemning the said property, seized herein as forfeited to the United States, and ordering the same to be sold by the marshal, it is ordered that a writ of error do issue in said case, directed to the district court of the United States for the district of Louisiana, returnable as the law directs.

Petition and order for writ of error.—Filed January 18th, 1870.

To the honorable the circuit court of the United States for the fifth circuit, sitting in and for the district of Louisiana:

Humbly shows the petition of Charles M. Conrad, of the city of New Orleans:

That your petitioner is informed and believes that there is error to his prejudice in a certain decree rendered by the district court of
3 the United States for the said district of Louisiana on the 3d day of Feb'uary, 1865, (signed on the 8th day of Feb'uary, 1865,) in the suit or proceedings entitled "United States vs. Ten lots of ground, the property of Charles M. Conrad," numbered 7653 of the docket of said court, whereby certain property therein described, whereof a portion belonged to your petitioner and the remainder to petitioner's vendees, was condemned as forfeited to the United States and ordered to be sold by the marshal.

Wherefore your petitioner prays that your honor will allow a writ of error directed to the judge of said district court of Louisiana, commanding him to send the record and proceedings in said case, with all things concerning the same, to the circuit court of the United States for the fifth circuit and district of Louisiana.

And your petitioner will ever pray, &c.

(Signed) C. M. CONRAD,
In Pro. Pa.

(Signed) BILLINGS & HUES,
Att'y, &c.

Order.

A writ of error is allowed as prayed for, returnable on 4th Monday of April next. (1870.)

(Signed) E. H. DURELL, *Judge.*

JANUARY 18TH, 1870.

Writ of error issued January 18th.—Received and filed in United States district court the same day.

C. M. CONRAD, OWNER OF 10 LOTS OF GROUND, plaintiff in error, *vs.* UNITED STATES, DEF'TS IN ERROR. } No. 6039.

UNITED STATES OF AMERICA, *ss :*

The President of the United States to the honorable the judge of the district court of the United States, holding sessions for the district of Louisiana, greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said district court, before you,
5 between The United States of America and Ten Lots of Ground, the property of C. M. Conrad, being No. 7653 of the docket of the said United States district court, a manifest error hath happened, to the great damage of the said C. M. Conrad, and by his complaint appears :

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, together with this writ, so that you have the same at New Orleans on the fourth Monday of April next, in the said cir-

(This reference approved.) F. A. WOOLFLEY, *Clerk.*

cuit court, *to be then and there held ; that the records and proceedings aforesaid being inspected, the circuit court* may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

6 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 19th of January, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.] (Signed) D. URBAN,
Clerk of the United States Circuit Court for District of Louisiana.

Citation in error.—Issued by the United States district court, January 19th, 1870.

To the United States of America, greeting :

You are hereby cited and admonished to be and appear at a session of the circuit court of the United States for the fifth circuit and for the district of Louisiana, to be held at New Orleans on the 4th Monday of April next, (1870,) pursuant to a writ of error filed in the clerk's office of the district court of the United States for the said district of
7 Louisiana, wherein Charles M. Conrad is plaintiff, and you, the

said United States, are defendant in error, to show cause, if any there be, why the judgment and decree in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. H. Durell, one of the judges of said circuit court for the fifth circuit and the district of Louisiana.

January 19th, 1870.

(Signed) E. H. DURELL,
Judge of the District Court of the United States for the Dist. of Louisiana.

Marshal's return.

Received, January 21st, 1870, by the United States marshal, and on the same day, month, & year, served a copy of the within citation in error on the United States of America, through P. H. Morgan, United States district attorney for the district of Louisiana, by leaving
8 the same at his office, in the hands of J. W. Gurley, his clerk, a person over 14 years of age, known to me—said P. H. Morgan, attorney, being absent at the time of said service.

New Orleans, January 21st, 1870.

(Signed) F. A. WOOLFLEY,
D'y U. S. Marshal.

Affidavit.

F. A. Woolfley being sworn says, he is a deputy of the United States marshal, and that on the 21st January, 1870, he served a copy of the within citation on the defendant in error, in the manner set out in his official return hereto attached.

(Signed) F. A. WOOLFLEY.

Sworn to and subscribed before me this 22d January, 1870.

(Signed) K. LOEW,
U. S. Comm'r.

Alias citation.—Issued by the United States district court, January 26th, 1870.

To the United States of America, greeting:

9 You are hereby cited and admonished to be and appear at a session of the circuit court of the United States for the fifth circuit and for the district of Louisiana, to be held at New Orleans on the 4th Monday of April next, (1870,) pursuant to a writ of error filed in the clerk's office of the district court of the United States for the said district of Louisiana, wherein Charles M. Conrad is plaintiff, and you, the said United States, are defendant in error, to show cause, if any there be, why the judgment or decree in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. H. Durell, one of the judges of said circuit court for the fifth circuit, and the district of Louisiana.

January 26th, 1870.

(Signed) E. H. DURELL,
Judge of the District Court of the U. S. for the Dist. of Louisiana.

10 *Marshal's return.*

Received, January 27th, 1870, by the United States marshal, and on the 29th day of the same month and year, served a copy of the within citation in error on the United States, through P. H. Morgan, its attorney for the district of Louisiana, by delivering the same to him, said attorney, in person.

New Orleans, January 29th, 1870.

(Signed) F. A. WOOLFLEY,
D'y U. S. Marshal.

Affidavit.

F. A. Woolfley being sworn says, he is a deputy marshal and that he served a copy of the within citation on the defendant in error, as set forth in his official return on file.

January 29th, 1870.

(Signed) F. A. WOOLFLEY.

Sworn to and subscribed before me in the day and year above written.

(Signed) K. LOEW,
U. S. Comm'r.

11 *Transcript from United States district court.—Filed March 24th, 1870.*

United States district court, district of Louisiana, (formerly eastern district:)

THE UNITED STATES,
vs.
TEN LOTS OF GROUND, PROPERTY OF CHARLES M. Conrad. } No. 7653.

Libel of information.—Filed, August 7th, 1863.

To the Honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the United States of America, for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in
12 court, in his own proper person, in the name and behalf of the said United States of America against the "estate, property, money, stocks, credits, and effects," hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares, as follows:

I. That James Graham, esq'r, marshal of the United States for the said district, under written authority given him by the said attorney in compliance with instructions issued by the Attorney-General of the United States to the district attorneys thereof, and by virtue of the act of Congress approved on the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," heretofore, that is to say, on the 29th day of July in the year 1863, seized as forfeited to the United

13 States at New Orleans, within said district and within the jurisdiction of this court, two lots of ground situate in suburbs of St. Mary, between St. Joseph and Delord streets, designated by the Nos. 7 & 8, on a plan by C. F. Zimple, 8th April, 1835, deposited in the office of W. C. Christy. Said lots adjoins each other and measure each: No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches and 5 lines deep, between parallel lines; No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep, between parallel lines, "English measure," together with the buildings and improvements thereon.

A certain lot of ground, with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, St. Charles, and Poydras streets, designated by the No. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B.
14 Cenas, which lot of ground measures 23 feet front on Camp street by a depth of 90 feet between parallel lines.

A certain lot of ground situate on the batture, in front of the first district, in the square bounded by New Levee, Lafayette, Fulton & Girod streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches & 7 lines front on New Levee street, and 24 feet 8 inches 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line which divides it from lot No. 12, (American measure,) together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Thoupitoulas streets, measuring 65 feet front on
15 Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Millor & others, 35 feet 7 inches in width on the rear adjoining the Fire Engine Company No. 6. The whole in conformity to a plan drawn by Joseph Pilie, surveyor, annexed to an act passed before C. Pollock, on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three story brick-building, & convenient stable erected thereon, situate on the western side of Carondelet street, between Hevia and Poydras streets, in the suburb St. Mary, designated as lot No. 3 on a plan by C. F. Zimpel, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet street by 23 feet 9 inches and 2 lines more or less in the rear, by a depth of 147 feet
16 11 inches, more or less, on the boundary line of lot No. 2, and of 149 feet, 10½ inches, more or less, on the boundary line of lot No. 4. The place between the stable and yard is reserved by the said act as an alley to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground, situate in the faubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades street, designated by the Nos. 1, 2, 3, & 4 on a plan by Knell & Werner on the 10th May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, & 3 measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth between parallel lines, lot No. 1 forming the corner of First and Prytania. Lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street, by 120 feet deep between parallel lines, (American measure.)

II. That the person who owns the said property, Charles M.
17 Conrad, of New Orleans, Louisiana, is and was, on the 17th day of July, 1862, and previously thereto had been, the owner thereof.

III. That certain States, forming a part of the territory, and constituting a part of the United States of America, and specifically enumerated by the President of the United States in his proclamation, duly issued and bearing date the first day of July, A. D. 1862, and now engaged, and were, at the time said proclamation was issued, engaged, and have since continued to be engaged, in armed rebellion against the lawful authority of the United States.

IV. That, by the act of Congress of the United States approved the 17th day of July, in the year of our Lord, 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, &c., for other purposes," provision
18 was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States and of other persons as therein set forth.

V. That the said Charles M. Conrad, the person whose property is herein seized, subsequently to the said 17th day of July, in the year of our Lord 1862, did act as an officer in the army or navy of the rebels in arms against the Government of the United States, or as a member of congress, or as a judge of a court, or as a cabinet officer, or as a foreign minister, or as a commissioner, or as a consul of the so-called Confederate States of America; or that while owning property in a loyal State or territory of the United States, or of the District of Columbia, he did give aid and comfort to the rebellion against the United States, and did assist such rebellion.

VI. That the said Charles M. Conrad, the person who owns the
19 said property, subsequently to the said 17th day of July, in the year of our Lord 1862, did act as governor of a State, or as a member of a convention or legislature, or as a judge of a court of one of the so-called Confederate States of America, to wit, the State of Louisiana, or did hold an office in the so-called Confederate States of America, after having held an office of trust or profit in the United States; or did hold an office or agency under the Government of the so-called Confederate States of America, or under one of the States thereof, said office being national, State, or municipal in its name and character, which said office or agency, he accepted, after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to, or to support the constitution of, the so-called Confederate States.

VII. That the said Charles M. Conrad, the person who owns
20 the said property, subsequently to the said 17th day of July in the year of our Lord 1862, within a State or Territory of the United States, was engaged in armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made by the President of the United States, on the 25th day of July in the year 1862, ceased to aid, countenance, and abet, such rebellion, and return to his allegiance to the United States.

VIII. That the said Charles M. Conrad, the person who owns the said property, subsequent to the 17th day of July in the year of our Lord 1862, within a State or Territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not within sixty days after public warning and proclamation duly given and made, on the 25th day of

July in the year 1862, by the President of the United States,
21 ceased to aid, countenance, and abet, such rebellion, and return to his allegiance to the United States.

IX. That by reason of the premises, the property herein described, and all the right, title, and interest, and estate, of the said person or persons, whose property is described herein, became and was forfeited to the United States, and ought to be condemned to their use.

Wherefore the said attorney, in the name and behalf of the United States of America, prays that process of monition may issue against the said property, and the owner and owners thereof, and against all persons interested or claiming an interest therein; warning them at some early day, to be named therein, to appear and answer this libel of information, and that an order of publication may be made in the usual form, and that the court may grant such further and other relief as to
22 law and justice may appertain, and as this court is competent to give in the premises, and that, after due proceedings had, the said property may be condemned and forfeited to the United States of America.

And he prays for general relief.

(Signed) RUFUS WAPLES,
United States District Attorney for the Eastern District of Louisiana.

Order of publication.—Issued August 8th, 1863.

United States district court, eastern district of Louisiana.

UNITED STATES, *vs.* TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad.	No. 7653.

Whereas two lots of ground, situate in the suburb St. Mary, between St. Joseph and Delord streets, designated by the Nos. 7 & 8, on a
23 plan by C. F. Zimpel, 8 April, 1865, deposited in the office of W. Christy; said lots adjoins each other and measure each: No. 7 measures 24 feet front on Camp street, by 116 feet, 10 inches 5 lines deep between parallel lines; lot No. 8 has a like and equal front on Camp street by 127 feet 10 inches deep between parallel lines, English measure, together with the buildings and improvements thereon.

A certain lot of ground with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, St. Charles, and Poydras streets, designated by the No. 47, on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet between parallel lines.

A certain lot of ground, situate on the batture, in front of the first district, in the square bounded by New Levee, Lafayette, Fulton,
24 & Girod streets, designated by the No. 11, on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, than surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas; said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on the line which divides it from lot No. 12, American measure, together with all the buildings and improvements thereon.

The one undivided half of a certain lot of ground, situate in the first district of said city, in the square bounded by Julia, Magazine, Notre

Dame, and Thoupitoulas streets, measuring 65 feet front on Julia street by 151 feet deep on the side towards Magazine street; 153 feet 9 inches in depth on the other side adjoining the property of Peters, Millor, & others; 35 feet 7 inches in width in the rear adjoining the fire-engine company, No. 6. The whole in conformity to a plan drawn by
25 Joseph Pilie, surveyor, and annexed to an act passed before C. Pollock, on the 12th of May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling house, the three-story brick buildings, and convenient stable erected thereon, situate on the western side of Carondelet street between Hevia & Poydras streets, in the suburb St. Mary, designated as lot No. 3, on a plan by C. F. Zimpel, surveyor, dated 10th December, 1833, deposited as plan No. 1, in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet street, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary line of lot No. 2, and 149 feet 10½ inches, more or less, on the boundary line of lot No. 4. The place between the stable and yard is reserved by the said act as an alley, to be appropriated forever to the common use of this and the five
26 adjoining tenements on said plan.

Four certain lots of ground situate in the faubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second and Nayades streets, designated by the Nos. 1, 2, 3, & 4, on a plan by Knell & Werner, on the 10th of May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, & 3, measure each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth between parallel lines. Lot No. 1 forming the corner of First and Prytania streets. Lot 4, measures 28 feet 1 inch 2 lines front on Prytania street, by 120 feet deep between parallel lines, American measure; together with all the buildings, rights, privileges, appurtenances, & other hereditaments to the same belonging, or in any wise appertaining, and all the right, title, and interest of the said Charles M. Conrad therein has been seized by the marshal of the United States for the eastern district of
27 Louisiana, by virtue of an act of Congress approved on the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason & rebellion, to seize and confiscate the property of rebels and for other purposes" and whereas the United States attorney for the eastern district of Louisiana did, on the 7th day of August, A. D. 1863, file a libel of information in this court praying the condemnation of said property and real estate under the act aforesaid, and that process of monition issue against the owner or owners of said property & real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information:

It is, therefore, on this 8th day of August, in the year of our Lord 1863, ordered that notice be given to the owner or owners of said property and real-estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 31st day of
28 August, and show cause, if any they have, why said property and real estate, and the right, title, and interest therein of the said Charles M. Conrad should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court-house of the district, and by publication in the Era newspaper twice a week previous to said 31st day of August, A. D. 1863, the first publication to be on or before 11th instant.

New Orleans, August 8th, 1863.

(Signed) E. H. DURELL, *Judge.*

Warrant.—Issued August 8th, 1863.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

29 You are hereby commanded forthwith to seize, and unto your possession take, the property, a full description whereof is hereto annexed as a part of this writ, together with all the improvements, buildings, privileges, and other hereditaments thereunto belonging, as well as all the right, title, and interest of Charles M. Conrad therein, now libelled by the United States for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid to be holden at the city of New Orleans on or before the 3d Monday from the service hereof to show cause, if any they have or can, why the said property, &c., should not be condemned and sold agreeably to
30 the prayer of the libellant; and how you have executed this warrant that you make return according to law.

Witness the Honorable Edward H. Durell, judge of the said court at New Orleans this 8th day of August, 1863, and the 88th year of the Independence of the United States.

[SEAL.] (Signed) ALFRED SHAW, *Clerk.*
By K. LOEW, *D'y Clerk.*

Description of property annexed to warrant.

Description of real-estate libelled in suit No. 7653.

Two lots of ground situate in suburb St. Mary between St. Joseph and Delord streets designated by the Nos. 7 & 8 on a plan by E. F. Zimpel, 8th April, 1835, deposited in the office of W. C. Christy. Said lots adjoin each other, and measure each: No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches 5 lines deep between parallel lines. Lot No. 8 has a like and equal front on Camp street, by 127 feet
31 10 inches deep between parallel lines, English measure; together with the buildings and improvements thereon.

A certain lot of ground, with the four-story brick store thereon, situate in the first district of said city, in the square bounded by Camp, Gravier, St. Charles, and Poydras streets, designated by the No. 47, on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas; which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

A certain lot of ground situated on the batture, in front of the First District, in the square bounded by New Levee, Lafayette, Fulton, and Girod streets, designated by the No. 11, on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches & 7 lines front, on New Levee street, and 24 feet three inches 3 lines on
32 said Fulton street, by a depth of 119 feet 3 inches and 2 lines, on the line which divides it from lot No. 12, American measure, together with all the buildings and improvement thereon.

The one undivided half of a certain lot of ground, situated in the first district of said city, in the square bounded by Julia, Magazine,

Notre Dame, & Thoupitoulas streets, measuring 65 feet front on Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Millor, & others; 35 feet 7 inches in width on the rear adjoining the fire engine company, No. 6. The whole in conformity to a plan drawn by Jos. Pilie, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings and convenient stable erected thereon, situated on the western side of Carondelet
33 street, between Hevia and Poydras streets, in the suburb St. Mary, designated as lot No. 3, on a plan by C. F. Zimpel, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans of J. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet street, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary line of lot No. 2, and of 149 feet 10½ inches, more or less, on the boundary line of lot No. 4. The place between the stable and yard is reserved by the said act, as an alley to be appropriated forever to the common use of this and the five adjoining tenements designated on said plan.

Four certain lots of ground, situated in the faubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, & 4, on a plan by Knell & Werner, on the 10th of May, 1848, deposited in the office
34 of H. B. Cenas, notary. Lots Nos. 1, 2, & 3, measure each 28 feet 1 inch 3 lines front, on Prytania street, by 120 feet in depth, between parallel lines. Lot No. 1, forming the corner of First and Pritania streets. Lot No. 4 measures 28 feet 1 inch and 2 lines, front on Prytania street, by 120 feet deep, between parallel lines, American measure.

True copy. August 8th, 1863.

(Signed) K. LOEW,
D'y Clerk.

Marshal's return on warrant. Filed August 29th, 1863.

Received August 8th, 1863, and in obedience to the within warrant, seized and took into my possession the within-described property, posted copies of the libel of information, this warrant and the order of the judge, on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in the city of New
35 Orleans, on the 11, 15, 19, 22, 25, 29 August, 1863. Returnable 31st August, 1863.

(Signed) JAMES GRAHAM,
U. S. Marshal.

Marshal's monition attached to warrant.

In the United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY of Charles M. Conrad. } No. 7653.

In obedience to a warrant, issued in this court, to me directed, in the above-entitled suit, I have seized and taken into my possession—

Two lots of ground, situate in the suburb St. Mary, between St. Joseph & Delord streets, designated by the Nos. 7 & 8, on a plan by C. F. Zimpel, 8th April, 1835, deposited in the office of W. Christy. Said lots adjoining each other, and measure, each: No. 7 measures 24 feet front, on Camp street, by 116 feet 10 inches and 5 lines, between
36 parallel lines; No. 8 has a like and equal front on Camp street by 127 feet 10 inches deep, between parallel lines, English measure.

A certain lot of ground, situate in the first district of said city, in the square bounded by Camp, Gravier, St. Charles, and Poydras streets, designated by the No. 47 on a plan by F. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

A certain lot of ground, situate on the batture in front of the first district, in the square, bounded by New Levee, Lafayette, Fulton & Girod streets, designated by the No. 11 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on
37 said Fulton street, by a depth of 119 feet 3 inches and two lines, on the line which divides it from lot No. 12, American measure.

The one undivided half of a certain lot of ground situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and Thoupitoulas streets, measuring 65 feet front on Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Millor, & others, 35 feet 7 inches in width on the rear adjoining the fire-engine company, No. 6. The whole in conformity to a plan drawn by Jos. Pilie, surveyor, and annexed to an act passed before C. Pollock on the 12th May, 1836.

All and singular the lot of ground situate on the western side of Carondelet street, between Hevia & Poydras streets, in the suburb St. Mary, designated as lot No. 3, on a plan by C. F. Zimple, sur-
38 veyor, dated 10th December, 1833, deposited as plan No. 1, in the book of plans, by F. Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary line of lot No. 2, and 149 feet 10½ inches, more or less, on the boundary line of lot No. 4. The place between the stable & yard is reserved by the said act as an alley to be appropriated forever to the common use of this and the five adjoining tenements, designated on said plan.

Four certain lots of ground situate in the faubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second, and Nayades streets, designated by the Nos. 1, 2, 3, & 4, on a plan by Knell & Werner, on the 10th May, 1848, deposited in the office of H. B. Cenas, notary. Lots Nos. 1, 2, & 3 measures each 28 feet 1 inch 3 lines front on Prytania street, by 120 feet in depth, between parallel lines,
39 lot No. 1 forming the corner of First & Prytania. Lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street, by 120 feet deep between parallel lines, American measure: Together with all the improvements, buildings, rights, privileges, appurtenances, and other hereditaments to the same belonging, or in any wise appertaining, & all the right, title, and interest of the said Charles M. Conrod therein

now libelled by the United States for the reasons assigned and set forth in the libel in the above-entitled suit, now pending in said district court.

And I do hereby cite and admonish the owner or owners thereof, and all persons having or pretending to have any right, title, or interest in or to the same, to be and appear at a district court of the United States for the district aforesaid, to be holden at the city of New Orleans on or before the third Monday from the date hereof, to show cause,
40 if any they have or can, why the said above-described property should not be condemned and forfeited to the United States, agreeably to the prayer of the libellants.

United States marshal's office, New Orleans, 11th day of August, 1863.

(Signed) JAMES GRAHAM,
U. S. Marshal.

Aug. 11, 15, 19, 22, 25, 29.

Default.—Extract from the minutes of September 1st, 1863.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

The delay allowed by law having expired herein, no claim or defence having been filed, after due monition and proclamation, on motion of the district attorney, it is ordered that all persons interested in the property seized herein be pronounced in contumacy and default, and the libel adjudged and taken pro confesso.

41 *Testimony for libellants.—Filed May 5th*, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

APRIL 19*th*, 1864—5 *o'clock p. m.*

Before Charles Claiborne, United States commissioner:

JOHN A. NEWELL, a witness on the part of libellants, duly sworn, deposes:

I resides in Rapides Parish. I arrived in the city on the 7th inst. I was in Rapides Parish at the time of the last rebel congressional election. Charles M. Conrad was a candidate. I saw tickets with his name on them. I knew of no other candidate for congress. I understood M. Conrad to be elected. I saw it afterwards in print in the Western Democrat, a paper published at Alexandria. It was generally under-
42 stood there that C. M. Conrad had received the majority of the votes cast. I have the same sort of knowledge of the election of C. M. Conrad to the rebel congress that I have that Abraham Lincoln was elected to the presidency in the last presidential election.

I have seen the name of C. M. Conrad mentioned in the reports of the proceedings of the rebel congress at Richmond.

(Signed) JOHN A. NEWELL.

Sworn to & subscribed before me this 19th April, 1864.
(Signed) CHA'S CLAIBORNE,
U. S. Comm'r.

J. E. WALLACE, a witness on the part of libellants, duly sworn
I am a member of the bar of Louisiana; formerly resided in De Soto Parish; now a resident of the city of New Orleans. I know that Charles M. Conrad was elected to the congress of the confederate States. I travelled with him between Atlanta, Georgia, and Jackson, Mississippi, at which time he stated to me that he was on his return from the rebel congress. This was in April, 1862. He introduced me to several other members of congress in the cars with us. I know by common report that he was re-elected to the rebel congress. I know of my own knowledge that an election took place for members to the rebel congress, and, to the best of my knowledge, he was re-elected.

43

This was about a year ago—some time in 1863. I was then at Avery's island, in the State of Louisiana.
(Signed) J. E. WALLACE.

Sworn to & subscribed before me this 19th April, 1864.
(Signed) CHARLES CLAIBORNE,
U. S. Comm'r.

Order taxing dist. attorney's fees.—Extract from the minutes of June 28th, 1864.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

Ordered that $1520 be taxed as the fees due Rufus Waples, United States district attorney, for services rendered in this case up to date.

44

JUNE 27TH, 1864.

Intervention of the State of Louisiana.—Filed August 31st, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
CH'S M. CONRAD. } No. 7653.

To the Honorable E. H. Durell, judge of the district court of the United States in and for the eastern district of Louisiana:

The intervention of B. L. Lynch, attorney-general of the State of Louisiana, and in his said capacity representing said State, alleges and articulately propounds as follows:

That the defendant herein is indebted unto the said State of Louisiana, herein intervenor, in the sum of $608.75, for this, to wit:

That, in the year 1861, an assessment was duly and legally made by the State assessor of the State of Louisiana of all the property within the limit of the parish of Orleans; that the said assess-

45

ment-rolls was duly adopted after the delay required by law, and shows that the State tax of the said defendant amount' to the sum of $304.80 for said year; that, in the year 1862, an assessment was made in manner and form as required by law, by the said State assessor, of all the property contained within the limits of said parish, and that the defendant herein stands assessed upon said assessment-roll of the year 1862 for the sum of $303.95, for the property owned by him in the city of New Orleans during the latter year, which two sums hereinabove referred to amount to $608.75, all of which will more fully and at large appear from a certified copy of each of said assessment-rolls and
46 other evidence to be produced upon the trial of this cause.

That, under and by virtue of an act of Congress approved July 16th, 1862, the proceedings in this cause must conform as nearly as may be to proceedings in admiralty or revenue cases, and that, according to admiralty proceedings and jurisdiction, ordinary or general creditors may claim the property, or proceeds of property, brought into registry, and to be disposed of or distributed by the court.

That, under and by virtue of the laws of the State of Louisiana, the property seized and taken into possession of the marshal of the United States was, at the time of such seizure & taken into possession, pledged to the State of Louisiana in payment of her claim as one of his creditors.

That, under and by virtue of the laws of the State of Louisiana, and in such cases made and provided, intervenor has a lien and privilege upon the property seized by the marshal aforesaid, which lien or
47 privilege is of a higher rank than any mortgage or other incumbrance whatever; that the said property at the time of such seizure, and previous thereto, was held and owned by said Charles M. Conrad, subject to and encumbered with a lien and privilege for the payment of intervenor's claim, amounting as aforesaid to $608.75.

That, at the time of filing libel or information, and at the time of the seizure aforesaid by the marshal, intervenor was entitled by the laws of Louisiana to enforce her claim and demand specifically against the property seized and taken as aforesaid into the hands of the United States marshal.

That all and singular the premises are true and within the jurisdiction of this court.

Wherefore intervenor prays that, by an order of this honorable court, she may be authorized to appear and prosecute this in-
48 tervention; that due process of law, according to the course and practice of the court in like cases, may issue, and that Rufus Waples, esq'r., district attorney of the United States for said district, may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court would be pleased to declare, pronounce, and decree that the claim and demand of intervenor against the said Charles M. Conrad, amounting to the sum of $608.75, as herein above set forth, be allowed; that judgment for said claim be rendered in favor of intervenor and against the said Charles M. Conrad; that the lien and privilege aforesaid upon the lot of ground seized by the marshal herein be recognized and enforced for the payment of intervenor's aforesaid claim, with her costs in this behalf expended.

That, in the event of this court proceeding to render judgment
49 of condemnation against said lot, then that your honor, notwithstanding such condemnation, and before awarding the aforesaid lot of ground or property, or the proceeds arising therefrom, to the United States, or to any inferior or inferiors, person or persons whatso-

ever, will first provide for the payment by such lot, or its proceeds, if the same is sold at suit of Government, of intervenor's claim and demand aforesaid; and that intervenor may have such other and further relief in the premises as in law and justice she may be entitled to receive, with her costs, &c.

(Signed) B. L. LYNCH.
(") B. L. LYNCH,
Attorney-General, for Intervenor.

Sworn to and subscribed before me this 31st day of August, in the year of our Lord 1864.

(Signed) K. LOEW, *D'y Clerk.*

50 *Memorandum.*

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

It appears from the minutes of September 6th, 1864, that the marshal's fees in the above case were taxed by order of court at $92.24.

Testimony for libellants.—Filed December 26th, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad.

MAY 18TH, 1864—5 *o'clock p. m.*

Before Charles Claiborne, United States commissioner.

R. R. BARROW, for libellants, sworn, deposes:

51 I reside in Louisiana, in the parish of Terrebonne. I have known Mr. C. M. Conrad for many years. I understood he was a candidate for the confederate congress, and that he was elected. I know it as I know that Lincoln was elected president of the United States. I have never heard of his resigning. The election for the confederate congress took place after secession. From general report, I know that he is a member of the confederate congress at this time.

(Signed) R. R. BARROW.

Sworn & subscribed before me this 18th day of May, 1864.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

Notice to commissioner.—Issued January 18th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

To Charles Claiborne, U. S. commissioner:

52 You are hereby notified that testimony will be taken before you in the above-entitled cause, on Thursday, the 19th day of

January, 1865, at the clerk's office, at 12 o'clock m., on behalf of libellant.

New Orleans, January 18th, 1865.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

Marshal's return.

Received January 18th, 1865, and on the same day, month, and year served a copy of the within notice on Charles Claiborne, United States commissioner, in person.

New Orleans, January 19th, 1865.

(Signed) M. EGAN,
D'y U. S. Marshal.

Testimony for libellants.—Filed January 19th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

53 *Testimony taken in presence of district attorney.—N. O., Jan'y 19th, 1865, 12 m.*

ROBERT DALTON, being duly sworn for libellants, deposes & says:

I know Mr. Cha's M. Conrad. I last saw him two years ago next March in Richmond, Virginia. I think he was then a member of rebel congress. He was formerly a resident of this State. I saw him on the streets of Richmond, at the corner of Seventh and Main, at a hotel there. I may have seen him since that time, but don't remember. I was introduced to him as a member of the confederate congress by Mr. Burke, or Col. Walton. He did not deny his being a member of the rebel congress.

In this contest Mr. Conrad is on the rebel slde. I suppose Mr. Conrad is doing all he can for his cause. He is, by common report, a very prominent men in the Confederate States government.

54 He is looked upon in that light by everybody. I solicited his influence for me as a member of congress. I had business with him as such.

(Signed) ROBERT DALTON.

Sworn to & subscribed before me this 19th Jan'y, 1865.

(Signed) CHARLES CLAIBORNE,
U. S. Comm'r.

HARMON DOANE, being duly sworn for libellant, deposes & says:

I am slightly acquainted with C. M. Conrad, I think I knew him here slightly some years ago. He has been a politician for a long time. That is his character. I think he was at one time a member of Congress of the United States, and also Secretary of *the* War of the United States. He was reported to be a member of congress of the so-called Confederate States. Public report said so. This was one year ago. He is a man of considerable ability by reputation. I saw him once

55 in Richmond; met him casually. I was in neither house of congress while they were in session. I should presume, by common report, that he was taking a prominent part in this contest as a member of the rebel congress. From his character, I should judge he would be a prominent man in anything he did undertake. I had no conversation with him, nothing more than a passing salutation of the day. It was about one year ago I saw him in Richmond. I had no business whatever with him.

(Signed) HARMON DOANE.

Sworn to & subscribed before me this 19th January, 1865.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

Notice to commissioner.—Issued January 20th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

56 To Charles Claiborne, U. S. commissioner:

You are hereby notified that testimony will be taken, before you, in the above-entitled cause, on Monday, the 23d day of January, 1865, at the clerk's office, at 12 o'clock M., on behalf of libellant.

New Orleans, Jan'y 20th, 1865.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

Marshal's return.

Received, January 20th, 1865, and, the same day, month, and year, served a copy of the within notice on C. Claiborne, esq'r., U. S. commissioner, personally.

January 21st, 1865.

(Signed) G. HOLLANDER,
D'y U. S. Marshal.

Testimony for libellants.—Filed January 25th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

57 *Testimony taken in presence of district attorney.*

NEW ORLEANS, *January 25th*, 1865.

ALEXANDER WHITE, being duly sworn, deposes and says:

I know Mr. C. M. Conrad; knew him here, and also knew him in the confederacy. He was a member of the confederate congress. He has

been in the confederate congress since July 17th, 1862, and I believe he is still there. He was formerly in the Congress of the United States.

(Signed) ALEX. WHITE.

Sworn to and subscribed before me this 25th Jan'y, 1865.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

JOSEPH HOWELL, being duly sworn, deposes and says:

I have heard Mr. C. M. Conrad was, and is, a member of the confederate congress, and believe him to be. I saw him when I was quite young. Don't recollect ever having seen him since. I think Mr. Conrad was also a member of the Congress of the United States.

58 (Signed) J. D. HOWELL.

Sworn to and subscribed before me this 25th Jan'y, 1865.

(Signed) CHA'S CLAIBORNE,
U. S. Comm'r.

Order.—Cause fixed for trial.—Extract from the minutes of January 30th, 1865.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

On motion of R. Waples, esq'r., United States attorney, ordered that the above-entitled and numbered case be assigned for trial, at the hour of 11 a. m., on Friday, 3rd Feb'uary, 1865; and that all the parties interested be notified thereof.

Notice of trial.—Issued January 30th, 1865.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
59 TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

To the attorney-general, B. L. Lynch, esq'r.:

You are hereby notified that the above cause has been assigned for trial, on Friday, the 3d day of Feb'uary, 1865, at 10 a. m.

By order of court.

New Orleans, Jan'y 30th, 1865.

[SEAL.] (Signed) K. LOEW,
D'y Clerk.

Marshal's service.

Received, Jan'y 30th, 1865, and, on the same day, month, and year, served a copy of the within notice on B. L. Lynch, esq'r., personally.

New Orleans, January 31st, 1865.

(Signed) M. EGAN,
D'y U. S. Marshal.

Note of evidence.—Filed Feb'uary 3d, 1865.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

60 Libellants offered in evidence the warrant, monition, and marshal's return, and the evidence of John A. Newell and J. E. Wallace, taken before U. S. Commissioner Claiborne, 19th April, 1864; that of R. R. Barrow, taken the 18th May, 1864; that of Robert Dalton & Harnon Doane, taken 19th January, 1865; and that of Alexander White and Joseph Howell, taken 25th January, 1865, all before the same commissioner.

Hearing and decree of condemnation.—From the judgment docket.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 7653.

This cause came up for trial—district attorney for libellants—and the monition, issued in this case, having been, heretofore, returned,
61 the usual proclamation having been made, the default of all persons entered, and the law and the evidence duly considered.

It is thereupon, on motion of R. Waples, esq'r, United States attorney, ordered, sentenced, and decreed by the court now here, and his 'owner, the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree, that the ten lots of ground, with the buildings and improvements thereon, the property of Charles M. Conrad, a full description whereof is contained in the libel on file, be, and the same are hereby, condemned, as forfeited to the United States.

And it is further ordered and decreed, that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, returnable on the 15th March, 1865, and that upon the return thereof the proceeds be distributed according to law, the legal rights of the intervenor to
62 the proceeds being reserved for further action.

Judgment rendered Feb'uary 3d, 1865.

Judgment signed Feb'uary 8th, 1865.

(Signed) E. H. DURELL, *Judge.*

Venditioni exponas.—Issued February 10th, 1865.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 7653.

United States district court, eastern district of Louisiana.

The President of the United States of America, to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

Whereas, at a district court of the United States, holden at New Orleans, for and within said district, on the third day of February, A. D.

1865, ten lots of ground, with all the buildings and improvements thereon, the property of Charles M. Conrad, fully described in the libel of
63 information on file, were, after proclamation and due proceedings had, decreed forfeit, and ordered to be sold at public auction: These are, therefore, to command you to sell to the highest bidder, at public auction, at the Merchants & Auctioneer Exchange, 18 Royal street, within said district, on the 22d day of March, 1865, at 12 o'clock m., the said property, first giving thirty days' notice, at least, of the time and place of sale, by advertising the same in the "True Delta," one of the newspapers printed at New Orleans, and by proclamation in the usual form, on the day of sale; the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs.

And make due return hereof, with your doings herein.

Witness the Honorable Edward H. Durell, at New Orleans, this 10th day of Feb'uary, A. D. 1865, and the 89th year of the Independence of the United States of America.

64 [SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

NEW ORLEANS, *March 30th*, 1865.

Pursuant to this precept, I have caused the property within named to be sold by public auction, and to the highest bidder, at the Merchants and Auctioneer Exchange, 18 Royal street, on the day, hour, and place therein directed, having given thirty days' previous notice of the time, place, and manner of the sale in the True Delta, one of the newspapers printed in the city of New Orleans, and by the crier on the day of sale, and at such sale, the purchasers were as under:

Rufus Waples:		2 lots on Camp street, bet. St. Joseph & Delord st's	$650 00
	Do.	1 lot on Camp s't, and 4-story brick store	5,200 00
65	Do.	1 lot fronting on New Levee & Fulton str's, & improvements	1,300 00
B. W. Burbank:		Undivided half of lot fronting on Julia street, and improvements	1,075 00
Rufus Waples:		1 lot Carondelet, between Hevia and Poydras s't, & 3-story brick store	1,550 00
J. H. Stevenson:		4 lots on Prytania streets, between First & Second str's	450 00
		Total am't sales	$10,225 00

Reference is made to the certificate of the recorder of mortgages of the parish of Orleans hereto annexed.

Whereby the sales amounted to ten thousand two hundred and twenty-five dollars, which I pay over to Ch's Claiborne, esq'r, the clerk of the court aforesaid, to be disposed of as the court directs.

Attest:

A. BAUDOUIN,
D'y Marshal.

66 Received from Cuthbert Bullitt, United States marshal, ten thousand two hundred and twenty-five dollars, being (as he saith)

the proceeds of the foregoing sale; the moneys to be disposed of as the court directs, and for which I have signed duplicate receipts.

(Signed) CHA'S CLAIBORNE, *Clerk.*

NEW ORLEANS, *March 30th*, 1865.

Certificate of mortgages referred to, and annexed to venditioni exponas.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records in his office there are no other mortgage' standing in the name of Cha's M. Conrad, and recorded against the property described in the printed slip hereto annexed,

Than the following, to wit: 1º & 2º, B. P., 1 fo's., 370 & 391. The privileges in favor of the board of commissioners of the first and
67 second draining districts on the property within their respective limits.

3º. L. P. 1, fo. 102. The privilege in favor of the city of Lafayette, amounting to $114.44, for sidewalk in front of property lastly described, recorded January 20th, 1862.

4º. B. 51, fo. 299. The one by him granted in favor of E. A. Canon, judge of the second district court, as per act before H. B. Cenas, notary, dated 8th, and recorded 10th April, 1847, on 2dly, 5thly, 1stly, and the 4thly described properties to secure, 1º, the reimbursement of the portion accruing to his minor children Charles M. A. and Laurence Louis Conrad, out of the price at which the real-estate belonging to the community between him and his deceased wife, and which was adjudicated to him, amounting to $7,062.50; and 2º, to secure the faithful performance of his duties as tutor of said minors.

5º. B. 62, fo. 551. The reversion he assumed by act before E. L. Lewis, notary, the 20th June, recorded July 1st, 1853, up to $1,980 and interest.

68 6º. B. 60, f. 325. Of the mortgage granted by Michael Aspil, on the property 3dly described in favor of municipality No. 2, per act before H. B. Cenas, notary, the 25th March, recorded the 18th May, 1852, to secure $2,642 and interest.

7º. B. 66, fo. 448. The one he granted as tutor, &c., in favor of J. N. Lee, judge of the 2d district court, per act before W. Christy, notary, dated the 31st May and recorded the 1st June, 1855, to secure the rights of his said minor children in the succession of their deceased mother, amounting to $7,062.50, on the 4th described property.

New Orleans, March 22d, 1865.

[SEAL.] (Signed) J. W. MADDEN,
Recorder.

[5-c. int. rev. stamp.]

Printed slip annexed and referred to in above certificate.

1º. Two lots of ground situate in suburb St. Mary, between St. Joseph and Delord streets, designated by the Nos. 7 & 8, on a plan by C.
69 F. Zimpel, 8th April, 1835, deposited in the office of C. W. Christy. Said lots adjoins each other and measure each: No. 7 measures 24 feet front on Camp street, by 116 feet 10 inches and 5 lines deep, between parallel lines; lot No. 8 has a like and equal front on Camp street, by 127 feet 10 inches deep between parallel lines, English measure, together with the buildings and improvements thereon.

2º. A certain lot of ground with the four-story brick store thereon, situate in the first district of said city in the square bounded by Camp, Gravier, St. Charles, and Poydras streets, designated by the Nos. 47 on a plan by T. Thompson, 7th May, 1842, deposited in the office of H. B. Cenas, which lot of ground measures 23 feet front on Camp street, by a depth of 90 feet, between parallel lines.

3º. A certain lot of ground situate on the batture in front of the first district in square bounded by New Levee, Lafayette, Fulton, and
70 Girod streets, designated by the No. 11, on a plan by G. A. Beard, duly certified by Hugh Grant, then surveyor of said district, dated 12th January, 1852, deposited in the office of H. B. Cenas. Said lot measures, according to said plan, 24 feet 2 inches and 7 lines front on New Levee street, and 24 feet 3 inches and 3 lines on said Fulton street, by a depth of 119 feet 3 inches and 2 lines on the line dividing it from lot No. 12, American measure, together with all the buildings & improvements thereon.

4º. The one undivided half of a certain lot of ground, situate in the first district of said city, in the square bounded by Julia, Magazine, Notre Dame, and T'houpitoulas streets, measuring 65 feet front on Julia street, by 151 feet deep on the side towards Magazine street, 153 feet 9 inches in depth on the other side, adjoining the property of Peters, Millor, and others, 55 feet 7 inches in width in the rear, adjoining
71 the fire-engine company, No. 6, the whole in conformity to a plan drawn by Jos. Pilie, surveyor, and annexed to an act passed before C. Pollock, on the 12th May, 1836.

5º. All and singular the lot of ground, together with the three-story brick dwelling-house, the three-story brick buildings, and co'venient stable erected thereon, situate on the western side of Carondelet street between Hevia and Poydras streets, in the suburb St. Mary, designated as lot No. 3, on a plan by C. F. Zimple, surveyor, dated 10th December, 1833, deposited as plan No. 1 in the book of plans of Mossy, notary. Said lot measures 23 feet 8½ inches front on Carondelet street, by 23 feet 9 inches and 2 lines, more or less, in the rear, by a depth of 147 feet 11 inches, more or less, on the boundary line of lot No. 2, and of 149 feet 10½ inches, more or less, on the boundary line of lot No. 4. The place between the stable and the yard is reserved by the said act as an alley to be appropriated forever to the common use of this and the five adjoining tenements des-
72 ignated on said plan.

6º. Four certain lots of ground situate in the faubourg Livandais, parish of Jefferson, in the square bounded by Prytania, First, Second, & Nayades streets, designated by the Nos. 1, 2, 3, & 4, on a plan by Knell & Werner, on the 10th of May, 1848, deposited in the office of H. B. Cenas, notary. Lots No. 1, 2, & 3, measure each, 28 feet 1 inch 3 lines front on Prytania street by 120 feet in depth between parallel lines; lot No. 1 forming the corner of First & Prytania streets. Lot No. 4 measures 28 feet 1 inch and 2 lines front on Prytania street by 120 feet deep, between parallel lines.

TERMS: Cash, at the time of adjudication, in United States Treasury notes.

United States marshal's office, New Orleans, 14th day of February, 1865.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Fe. 15, 22, Mr. 8, 15, 22.

73 *Taxation of costs.—Extract from the minutes of April 5th, 1865.*

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

It is ordered, adjudged, and decreed that the costs and charges in this case be taxed as follows, viz:

District attorney for services to June 30th, 1864, 2 %	$204 50
subsequent	25 00
A. Shaw, ex-clerk	25 60
C. Claiborne, clerk	50 80
U. S. comm'r fee	20 00
C. Bullitt, marshal	385 74
J. Graham, ex-marshal	93 44
Registrar's com., 1%	102 25
	$907 33

Decree of distribution.—Extract from the minutes of April 13th, 1865.

UNITED STATES
vs.
74 TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

The marshal having returned into court the writ of venditioni exponas, showing that the libelled property was sold for		$10,225 00
It is ordered, adjudged, and decreed that after deducting the costs heretofore taxed and allowed, amounting to	$907 33	
The U. S. direct tax	103 56	
City tax, 1862, int. & com	654 95	
" 1863, "	757 05	
Clerk's & sh'ff's fees	8 50	
City tax, 1864	930 00	
State tax, 1861	304 80	
" 1862	303 95	
" 1863	303 95	
" 1864	219 90	
& drainage tax	32 02	
		4,526 01
The balance of		$5,698 99

to be paid into the Treasury of the United States, according to law.

75 *Rule to correct marshal's return.—Filed April 4th, 1868.*

United States district court for district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

On motion of Sullivan, Billings & Hughes, of counsel for Charles M.

Conrad, the defendant in this cause, and of C. M. Conrad, said defendant, in proper person, and on giving the court to understand and be informed that the return made by the marshal of this district, formerly the eastern district of Louisiana, on the order or warrant of seizure issued in this case, showing how the same was executed, in the following words and figures, to wit:

"Received August 8th, 1863, and, in obedience to the within warrant, seized and took into my possession the within-described
76 property, posted copies of the libel of information, this warrant, and the order of the judge on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in the city of New Orleans, on the 11, 15, 19, 22, 25, 29 August, 1863, returnable 31 August, 1863.

(Signed) "JAMES GRAHAM,
"*U. S. Marshal.*"

Is erroneous in several particulars, but especially in this, that the said marshal therein states that he seized and took into his possession the "within-described property," meaning the property described in said warrant or order, whereas, in fact and in law, no such seizure was ever made, and said marshal never did, in fact nor in law, take possession of said property, and that this the said Charles M. Conrad is ready to verify and to prove; and on further giving the court to understand and be informed that said Charles M. Conrad is about to apply to the honorable the circuit court of the United States for the 5th cir-
77 cuit and this district for a writ of error to this honorable court for the purpose of reviewing the proceedings and the judgment herein:

It is ordered that Samuel H. Torry, esq'r, United States district attorney for the district of Louisiana, do show cause on the 20th day of April, in the year 1868, at 11 a. m., why said errors should not be corrected, and said return be so amended as to make the same conform to the facts in the case.

It is further ordered that a copy of this motion be served on Rufus Waples and E. W. Burbank, the purchasers of the property libelled in this case, at the sale thereof made under the judgment or decree heretofore rendered in this case.

Personally came and appeared before me, Charles M. Conrad, who make' oath that he believes, and has good reason to believe, that the allegations contained in the foregoing motion are correct and true.

(Signed) C. M. CONRAD.

78 Sworn to and subscribed before me this 4th April, 1868.

(Signed) K. LOEW,
U. S. Comm'r.

Marshal's return.

Received April 7th, 1868, by the United States marshal, and on the same day of April, 1868, served a copy of the within motion, &c., on E. W. Burbank, named herein, personally at office, 71 T'houpitoulas street, in this city, and on 8th day of April, 1868, served a copy of the same on Rufus Waples, attorney, named herein, personally, at domicil 116 Chesnut street, in this city.

New Orleans, April 10th, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

Exception to rule.—Filed April 17th, 1868.

District court of the United States for the district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad. } No. 7653.

79 Exception to rule in the cause numbered 7653 of the docket of the late district court of the United States for the eastern district of Louisiana.

Now comes the United States of America, libellant in this cause, by Samuel H. Torry, its duly constituted attorney, and considering the rule to show cause, taken in this cause on the 4th day of April, A. D. 1868, a copy of which rule is hereto attached, and said that, for and in behalf of the United States of America, he excepts to all and singular that matters contained and set forth and the object and relief sought for in said rule, and to the right and authority in law of this court to entertain and consider the same, and for cause, among other things, shows:

1st. That the said Charles M. Conrad, plaintiff in said rule, made default in this cause and failed and neglected to appear and defend said cause in due time and within legal delay and by the duly rendered
80 and recorded final sentence, judgment, and decree of the district court of the United States for the eastern district of Louisiana, the property named and described in the libel in this cause, was condemned, and all persons having any interest therein pronounced in default, and the said sentence and judgment carried into effect before the date of the taking of the said rule; and that said rule was taken before and without any claim having been made to said property or any part thereof by said plaintiff in rule, as appears by the record of the court, whereby said plaintiff in rule is without any legal status in this cause, for the purpose set forth and sought to be effected by said rule.

2°. That the official return of the United States marshal sought to be affected by said rule is a part of the judicial record in this cause, and cannot, in law, be permitted to be falsified, altered, avoided, or contradicted by any proceeding in this cause at the instance of
81 any persons or party claiming to be a party to the cause, but as to all such persons said return is binding, final, & conclusive.

3°. That the marshal is by law prohibited from contradicting said return in manner as sought by said rule.

4°. That the court has no power in law to alter, contradict, or change the said return of said marshal, the same being the official act of the said marshal, and for which he is responsible.

5°. That the court is without power and authority to compel the said marshal to amend, contradict, or change his return in any respect, but the same, as made and return' by said marshal, is, in law, binding, final, and conclusive as to all manner of persons who might, in due time, have appeared and claimed said property or any part thereof.

6°. That final decree and judgment having, in this cause, been
82 rendered and carried into effect, without any appearance and claim, interposed in this cause by said plaintiffs in rule, this court is without authority in law, but by law is prohibited from entertaining any proceedings at the instance of said plaintiff in rule. tending to impeach and falsify its judgment and decree in this cause, by im-

peaching, contradicting, or falsifying any portion of the judicial record in this cause, upon which said judgment and decree is based, as sought to be done by said rule.

7°. That the said return of the said marshal is a portion of the judicial records of the court in this cause, and cannot be impeached, varied, contradicted, or avoided by proof aliande of any character or from any source, so as to alter, effect, increase, or diminish its legal import and effect as a judicial record in this cause, and that the truth and verity of the same cannot be questioned in this cause by rule or otherwise.

Wherefore the said district attorney of the United States, for
83 and in behalf of the libellant in this cause, prays this honorable court that the said rule be dismissed with costs.

(Signed) SAM. H. TORREY,
U. S. Attorney.

Exception of late marshal.—Filed April 20th, 1868.

United States district court.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

Now into court here comes James Graham, late United States marshal for the eastern district of Louisiana, whose official return is a part of the record in this cause, and which return is sought to be contradicted by the rule taken in this cause by C. M. Conrad, now on file and of record herein and for cause against the same, saith:

That he excepts to all and singular the matters and relief sought for in said rule, for this: That the official return sought to be affected
84 and contradicted by said rule, is, in his official act, made and done by authority of his office, while in office and within the purview of his duties in such office.

That he has not asked to have the same altered, amended, changed, or contradicted; that he asserts said return to be true and correct, and stands by the same as his official act.

Wherefore he prays said rule to be dismissed with costs.

(Signed) JAMES GRAHAM,
Late U. S. Marshal.

(Signed) HONOR & BENEDICT &
J. R. BECKWITH,
Attorneys.

Order: Rule continued.—Extract from the minutes of April 20th, 1868.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. CONRAD. } No. 7653.

85 The rule taken by C. M. Conrad, on 4th inst., was called up for trial, and, by consent of counsel, continued till Thursday, the 7th May, 1868, at 11 a. m.

Order : Rule continued.—Extract from the minutes of May 7th, 1868.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

For want of time it is agreed by counsel that the rule in the above case be taken up and tried on Wednesday, 13th inst., at 11 a. m.

Order : Rule continued.—Extract from the minutes of May 13th, 1868.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

86 For want of time it is agreed by counsel that the above case be taken up on Monday, 25th inst., at 11 a. m.

Hearing and continuance.—Extract from the minutes of May 25th, 1868.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

The rule taken by the defendant on 4th April last was called up—Sullivan, Billings & Hughes, Semmes & Mott, and C. M. Conrad & Son for plaintiffs in rule; S. H. Torrey, U. S. attorney, assisted by Rufus Waples, ex district attorney, Hornor & Benedict, L. M. Day & J. B. Weller, for def'ts in rule—when, after hearing the argument of J. R. Beckwith and L. M. Day in support of the exceptions to the rule, the further hearing is continued 'till to-morrow, 26th inst., at 7 o'clock p. m.

87 *Order : Rule re-assigned.—Extract from the minutes of May 26th,* 1868.

UNITED STATES
vs.
PROPERTY OF C. M. CONRAD. } No. 7653.

Ordered that the rule in the above case fixed for this day at 7 p. m., be transferred to Saturday, 30th inst., at 11 a. m., and that all parties interested be notified thereof.

Order & continuance.—Extract from the minutes of May 30th, 1868.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

The rule in the above case came up agreeably to continuance. Counsel on both sides being present, and after hearing further argu-
88 ment the same is again continued 'till Monday, 1st June, 1868, at 11 a. m.

Order: Rule submitted.—Extract from the minutes of 1st June, 1868.

UNITED STATES,
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 7653.

The rule in the above case continued from 30th ultimo was resumed, the counsel on both sides being present, and, after hearing further argument, the court took time to consider, and allow the parties twenty days to furnish briefs.

Order postponing decision—Extract from the minutes of 14th July, 1868.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

89 Ordered that the decision in the above cause upon the question submitted, be deferred 'till the next term of the court, and that the parties have leave to furnish additional briefs.

Reasons for judgment—Filed July 16th, 1868.

United States district court, district of Louisiana.

(1) UNITED STATES
vs.
— LOTS OF GROUND, PROPERTY OF D. F. Kenner. } No. 7642.

(2) UNITED STATES
vs.
— LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 7653.

(3) UNITED STATES
vs.
— LOTS OF GROUND, PROPERTY OF F. H. Hatch. } No. 7749.

On the motion taken by defendants to correct or amend the marshal's return—

90 In compliance with the request of counsel, the court will briefly state in writing the grounds which were orally assigned for the decisions rendered by the court in these cases, overruling the motions made by defendants, that the court should correct certain words alleged to exist in the marshal's return to the warrant of seizure.

The grounds on which the motion is based is, that at common law, an error of this description could be corrected by means of a writ of error, coram vobis, and that, in modern practice, this writ is generally dispensed with, and whatever could be done under it can be done on mere motion.

Admitting this to be true, the question arises, is the alleged error of the character of those that could be corrected by the writ of error, coram vobis? I think not. See Tidd's Practice, p. 1,191; Fritzherbert' *Matiera* Brevium, 21, writ de error; Bacon 2, p. 484, Error, 1-6; Year-Book, 33d Edward I, A. D. 1305, p. 356.

91 This last decision was rendered more than five centuries ago, and I have been unable to find any decision by which the doctrine therein laid down has been overruled.

The principle is generally recognized that, as between the parties to the suit, the return of the sheriff imports an absolute verity.

The motions must therefore be dismissed.

There is another reason why they should be dismissed.

Fortunately or unfortunately, these suits have all been instituted on the admiralty side of this court, and the proceedings therein have been conducted agreeably to its practice in admiralty cases. But in several decisions recently rendered, the Supreme Court of the United States (see the case of the United States vs. Union Insurance Company, and several others similar to it) have determined that this was a mistake; that seizures on water only can be tried in admiralty, but that
92 seizures on land should be conducted and tried in the same manner provided for revenue seizures on land, in a trial of issues of fact by a jury.

That court has even gone further. They have decided that proceedings of the confiscation of property under the acts of August 6th, 1861, and July 17th, 1862, are in the nature of criminal prosecutions, and must conform to the rules prescribed by the Constitution and the laws for criminal trials.

It follows from these decisions, that every step that has been taken in these cases, from beginning to end, is wrong, and consequently that the decrees of condemnation founded on these proceedings are absolute nullities and can form no title to property sold under them.

93 *Bond for writ of error.—Filed January 19th*, 1870.

Know all men by these presents that we, Charles M. Conrad, as principal, and Duncan F. Kenner as his surety, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals this 14th day of January, in the year 1870.

Whereas the above-named C. M. Conrad has prosecuted to the circuit court of the United States for the fifth circuit and district of Louisiana, a writ of error to reverse the decree or judgment rendered by the district court of the United States for the eastern district of Louisiana, in the above-entitled suit, now therefore the condition of this
94 obligation is such that if the above named C. M. Conrad shall prosecute his said writ of error to effect, and answer and pay all such costs as upon affirmance may be adjudged against him, if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be, and remain in full force and virtue.

(Signed) DUNCAN F. KENNER. [L. S.]
" C. M. CONRAD. [L. S.]

Sealed and delivered in presence of—
(Signed) J. A. CHARBONNET.

The foregoing bond is approved.
(Signed) E. H. DURELL,
Judge of the District Court of the United States for District of Louisiana.

District court of the United States, district of Louisiana, formerly eastern district.

I certify that the foregoing 152 pages do contain and form a correct and complete transcript of all the proceedings, documents filed, and evidence adduced, in the case of the United States vs. Ten Lots of Ground, property of Charles M. Conrad, No. 7653 of the docket.

In testimony whereof I have set my hand and the seal of our court at New Orleans, this 19th January, 1870.

(Signed) CH'S CLAIBORNE, *Clk.*
[SEAL] By K. LOEW, *D'y-Clerk.*

PROCEEDINGS IN U. S. CIRCUIT COURT.

Assignment of errors.—Filed April 25th, 1870.

Circuit court of the United States.

C. M. CONRAD, OWNER OF 10 LOTS OF GROUND,
vs.
THE UNITES STATES OF AMERICA. } No. 6039.

And now comes into court Charles M. Conrard, and says that in the record and proceedings in this case there is manifest error, in this, to wit:

That the libel herein, and the matters therein contained are not sufficient in law for the said United States to have or maintain its aforesaid action against the said Charles M. Conrad; there is also error, in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid given was given for the said United States against the said Charles M. Conrad, whereas by the law of the land the said judgment ought to have been given for the said Charles M. Conrad and against the said United States.

Said Charles M. Conrad further sets forth the following errors in said proceedings and decree, to wit:

1st. That said proceedings were in their nature and substance a prosecution for crime and offences alleged to have been committed by said Charles M. Conrad against the United States, and said Charles M. Conrad was never lawfully held to answer by a presentment or indictment of a grand jury, nor was he ever tried for or convicted of the same by a jury; nor was he ever informed of the nature or cause of the accusation against him, nor had he any knowledge thereof, or any opportunity of being confronted with the witnesses against him, or to have compulsory process for obtaining witnesses in his favor; all of which was contrary to article 3, section 2 (§ 2) of the Constitution of the United States, and to articles Nos. 5 & 6 of the amendments to the same.

2d. That even if the proceedings should be decided to be of a partly civil nature, the court before which they were instituted and conducted had no jurisdiction of the same.

3d. That no lawful seizure of said property was ever made, either before or after said proceedings were instituted, or, if seized, no notice of said proceedings were ever given to said Charles M. Conrad, and the court had no jurisdiction of the same.

4th. That no notice, actual or constructive, of said proceedings was ever given to said Charles M. Conrad.

5th. That the description given by the marshal's monition of the property libelled in said case was inaccurate, insufficient, and not such as to give information of the seizure thereof, even if any such seizure had been made.

6th. That the acts charged against said Charles M. Conrad were not alleged to be contrary to the statute in such case made and provided.

7th. That the facts in said case, if found at all, were found by the judge, and not by a jury; and that without having any witnesses.

8th. That, by the decree rendered in said case all the right, title, and interest of said Charles M. Conrad in and to said property was condemned as forfeited to the United States, whereby said decree did attempt to work a forfeiture of said property, absolutely and be-
99 yond the life of said Charles M. Conrad, contrary to the Constitution of the United States, and to the act of Congress approved 17th of July, 1862, on which said proceedings were based, and to the resolution passed on the same day, explanatory thereof, and the said Charles M. Conrad prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing; and that he may be restored to all things which he has lost by occasion of the said judgment, &c., &c.

(Signed) C. M. CONRAD & SON,
" BILLINGS & HUGHES,
Attorneys for Plaintiff in Error.

Rule to dismiss writ of error.—Extract from the minutes of May 7th, 1872.

Circuit court of the United States. Fifth circuit and district of Louisiana. April term, A. D. 1870.

NEW ORLEANS, *Saturday, 7th day of May*, 1870.

Court met pursuant to adjournment:

Present, the Hon. W. B. Woods, presiding judge.
100 Present, the Hon. E. H. Durell, dist. judge.

UNITED STATES
vs.
TEN LOTS OF GROUND, PROPERTY OF C. M. Conrad. } No. 6039.

On motion of A. B. Long, U. S. district attorney, ordered that Charles M. Conrad, plaintiff in error in above cause, show cause on 14th instant, at 11 a. m., why the writ of error herein should not be dismissed on the grounds filed.

Grounds.—Filed May 7th, 1870.

CHARLES M. CONRAD, OWNER OF TEN LOTS OF ground, plaintiff in error,
vs.
THE UNITED STATES OF AMERICA, DEFENDants in error, } No. 6039.

That no transcript of record in the case named and stated in the writ of error, has been returned and filed with the same in this court with an assignment of errors as required by law.

101 That the transcript of the record returned and filed with the writ of error herein showed no such case, nor any such final judgment as named and stated in the writ of error.

That it appears from the transcript of the record returned and filed with the writ of error in this case, that there never was any such case in, nor any such final judgment whatever rendered by, the district court of the United States for the district of Louisiana, as that stated and described in said writ of error.

That it appears from the transcript returned and filed herein, that the same consists of a mixture of the records of two different cases in two different courts.

That it appears that, in 1863, certain proceedings in confiscation were instituted by the United States district attorney in the district court of the United States for the eastern district of Louisiana, in the name
102 of The United States of America vs. Ten Lots of Ground, the property of Charles M. Conrad, and No. 7653 of the docket of that court; and that afterwards, to wit, in the year 1865, after due proceedings, &c., said property was condemned and sold, and Rufus Waples and Edward W. Burbank became the perchasers of certain portions of the same, and received their respective deeds from the marshal; and that the sale of all said property was in effect ratified and confirmed by said court in 1865, and the nett proceeds thereof ordered to be paid over to the United States, &c.

That it further appears from said transcript that in 1869, after the close of all said proceedings in said district court of the United States for the eastern district of Louisiana, and after the same had been superceded and abolished by the creation of the district court of the United States for the district of Louisiana, the plaintiff in error, Charles M. Conrad, filed a so-called libel of review in the said district court of the United
103 States for the district of Louisiana, against the United States of America, Rufus Waples and Edward W. Burbank, wherein the proceedings aforesaid in confiscation were recited, and various errors and irregularities were assigned and alleged to have taken place, and concluded with a prayer that the said United States of America, Rufus Waples, and Edward W. Burbank might be cited and made parties to the so-called libel of review, and that said decree of condemnation and sale by the district court of the United States for the eastern district of Louisiana, might be reviewed, the sales annulled, &c.

And it further appears that the said proceedings on the so-called libel of review are still pending and undetermined, and that no final judgment or decree has been rendered in the case last aforesaid.

Marshal's return.

Received, May 9th, 1870, by the U. S. marshal, and on the 10th
104 day of same month and year served a copy of within rule on the within-named Charles M. Conrad by leaving the same at his office, No. 37 Carondelet street, in the hands of his son, C. A. Conrad.

New Orleans, May 10th, 1870.

(Signed) S. W. REED,
D'y U. S. Marshal.

Rule & grounds.—Extract from the minutes of May 13th, 1870.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF Charles M. Conrad, plaintiff in error. } No. 6039.

On motion of A. B. Long, United States attorney, ordered that plaintiff in error show cause on Saturday, 21st instant, at 11 a. m., why the writ of error in this case be not dismissed on the grounds filed.

Grounds.—Filed May 13th, 1870.

United States circuit court.

UNITED STATES, DEFENDANTS IN ERROR,
vs.
TEN LOTS OF GROUND, THE PROPERTY
105 of Ch's M. Conrad, pl'ff in error. } No. 6039.

1st. That the writ of error is not made returnable to the next circuit court to be holden in the district after the date of the rendition of the judgment complained of.

2d. That several terms of the circuit court intervened after the rendition of the judgment complained of and the return-day of the writ of error.

Whereupon it was ordered that said motion be assigned for hearing for Saturday, the 21st day of May, 1870, at 11 o'clock a. m., and that said plaintiff in error, Charles M. Conrad, be notified thereof.

Marshal's return.

Received, May 14th, 1870, by the U. S. marshal, and on the same day, month, and year served a copy of the within rule on C. M. Conrad, plaintiff in error, by leaving the same at his office, No. 37 Carondelet street, in the hands of C. A. Conrad, attorney.

New Orleans, May 14th, 1870.

(Signed) S. W. REED,
Dy U. S. Marshal.

106 *Order.—Rule of 7th May, 1870, dismissed.—Extract from the minutes of May 17th, 1870.*

C. M. CONRAD, OWNER OF TEN LOTS OF ground, pl'ff in error.
vs.
UNITED STATES, DEF'TS IN ERROR. } No. 6039.

For the reasons orally assigned by the court in the case of The United States vs. 16 lots of ground, the property of D. F. Kenner, No. 6038 of the docket, it is ordered that the rule to dismiss, taken on 7th instant, be discharged with costs.

Withdrawal of rule of May 13th, 1870.—Extract from the minutes of May 21st, 1870.

C. M. CONRAD, OWNER OF TEN LOTS OF ground, plaintiff in error,
vs.
UNITED STATES, DEF'TS IN ERROR. } No. 6039.

On motion of the district attorney, it is ordered that the rule to dismiss the writ of error in the above cases entered on the 13th instant be withdrawn.

107 *Joinder in error.—Filed May 23d, 1870.*

United States circuit court for 5th circuit and district of Louisiana.

UNITED STATES
vs.
TEN LOTS OF GROUND, THE PROPERTY OF C. M. Conrad. } No. 6039. In error.

And afterwards, to wit, on the twenty-third day of May, in April term, in the year of our Lord one thousand eight hundred and seventy, the said United States, by A. B. Long, its attorney, freely comes here into court and says there is no error either in the record and proceedings aforesaid, or in the giving of the judgment aforesaid, and he prays that the said circuit court of judicature, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above*d* assigned for error, and that
107 the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.
(Signed) A. B. LONG,
U. S. Att'y.

Hearing & continuance.—Extract from the minutes April term, 1870.

NEW ORLEANS, *Friday, May 27th*, 1870.

Court met pursuant to adjournment.
Present, his honor J. P. Bradley, associate justice of the Supreme Court, presiding; present, his honor W. B. Woods, judge of the circuit court.

C. M. CONRAD, OWNER OF TEN LOTS OF ground, plaintiff in error,
vs.
UNITED STATES, DEF'TS IN ERROR. } No. 6039.

The above cause came on to be heard on the transcript of the record from the district court of the United States for the district of Louisiana.
A. B. LONG,
U. S. Attorney, for Def'ts in Error.
CONRAD & SON, AND
E. C. BILLINGS,
For Pl'ffs in Error.

109 And after hearing the opening argument of Tho's Allen Clarke, esq., the cause is continued till to-morrow, at 10 o'clock.

Order.—Extract from the minutes of May 28th, 1870.

C. M. CONRAD, OWNER OF 10 LOTS OF GROUND, pl'ff in error,
vs.
UNITED STATES, DEFENDANTS IN ERROR. } No. 6039.

On motion of counsel for plaintiff in error, the district attorney being present, and on suggesting that by a clerical error a libel of review, filed by plaintiff in error, and the proceedings thereon, had been included in the transcript of the record in cases prepared for this court;

It is ordered that the clerk of this court be authorized to detach said proceedings from said transcript, the same being irrelevant in this case.

Hearing & continuance.—Extract from the minutes of May 28th, 1870.

110 C. M. CONRAD, OWNER OF TEN LOTS OF ground, pl'ff in error,
vs.
UNITED STATES, DEF'TS IN ERROR. } No. 6039.

This cause was resumed, and, after hearing the argument of C. M. Conrad and L. M. Day, the same is continued till Tuesday, 31st inst., at 11 a. m.

Hearing & submission.—Extract from the minutes of May 31st, 1870.

C. M. CONRAD, OWNER OF TEN LOTS OF ground, pl'ff in error,
vs.
UNITED STATES, DEF'TS IN ERROR. } No. 6039.

This cause was resumed, and, after hearing the argument of L. M. Day, J. B. Weller, United States Attorney A. B. Long, Rufus Waples, esq'r, for defendants in error, and that of Messrs. E. C. Billings, T. A. Clarke, and C. M. Conrad, for plaintiff in error, the court took time to consider.

111 *Order: Decision withheld.—Extract from the minutes of June 11th, 1870.*

C. M. CONRAD, OWNER OF TEN LOTS OF ground, plaintiff in error,
vs.
UNITED STATES, DEF'TS IN ERROR. } No. 6039.

In this case, for reasons assigned, the court withholds its decision until the next term of the Supreme Court of the United States.

Decree.—From judgment-book.

Circuit court of the United States, fiifth circuit and district of Louisiana. April term, 1872.

NEW ORLEANS, *Thursday, June 20th*, 1872.

Court met pursuant to adjournment. Present, Hon. J. P. Bradley, associate justice of Supreme Court.

In error at the suit of C. M. Conrad.

UNITED STATES
vs.
112 TEN LOTS OF GROUND, THE PROPERTY of C. M. Conrad. } No. 6039.

For reasons assigned and on file in suit No. 6158 of the docket, it is ordered that the decree of confiscation pronounced by the district court on the 3d February, 1865, be avoided and reversed; and it is now ordered, adjudged, and decreed by this court that the libel of information in this cause be dismissed with costs, and that the plaintiff in error is entitled to be paid the nett proceeds of the property sold under said judgment, (less the encumberances paid,) but that the said sale do stand confirmed.

Decree rendered June 20th, 1872.

Decree signed June 20th, 1872.

JOSEPH P. BRADLEY,
Associate Justice Sup. C't U. S.

Motion and order.—Extract from the minutes & filed June 20th, 1872.

C. M. CONRAD, OWNER OF TEN LOTS OF ground, pl'ff in error,
vs.
UNITED STATES, DEF'TS IN ERROR. } No. 6039.

113 On motion of the district attorney it is ordered by the court that, upon his serving out a writ of error and lodging copy thereof in the clerk's office within 10 days, the same shall operate as a supercedeas.

Petition for writ of error.—Filed June 27th, 1872.

To the honorable W. B. Woods, judge of the circuit court of the United States for the fifth circuit and district of Louisiana.

Humbly shows, the petition of Charles M. Conrad, of the city of New Orleans—

That your petitioner is informed and believes that there is a manifest error to his prejudice in a final judgment rendered by the circuit court of the United States for the fifth circuit and district of Louisiana, on the 20th day of June, 1872, and signed by the judge on the same day in a certain suit or proceeding therein entitled "C. M. Conrad, the owner of 10 lots of ground, plaintiff in error, vs. The United
114 States, defendants in error," and numbered 6039 of the docket of said court.

Wherefore your petitioner prays that your honor will allow a writ of error to said circuit court in said case.

(Signed) C. M. CONRAD & SON.
" BILLINGS & HUGHES,
Attorneys for Plaintiff in Error.

Order thereon.—Filed June 28th, 1872.

A writ of error is allowed in this case as prayed for, and according to law, returnable to the Supreme Court of the United States on the first

Monday of December next, the petitioner giving bond in the sum of five hundred dollars, with good and solvent security, and conditioned as the law directs.

June 28th, 1872.

(Signed) W. B. WOODS, *Judge.*

Bond for writ of error.—Filed June 28th, 1872.

115 United States circuit court.

C. M. CONRAD, OWNER OF TEN LOTS OF ground, pl'ff in error,
vs.
THE UNITED STATES, DEF'TS IN ERROR. } No. 6039.

Know all men by these presents that we, Charles M. Conrad, as principal, and Charles A. Conrad, as surety, are held and firmly bound unto the United States of America, in the full and just sum of five hundred ($500) dollars, to be paid to the said United States, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals, and dated this 27th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a
116 suit depending in said circuit court, wherein said C. M. Conrad was plaintiff in error, and the said United States was defendant in error, judgment was rendered against the said Charles M. Conrad, and the said Charles M. Conrad having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said Charles M. Conrad shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force & virtue.

(Signed) C. M. CONRAD. [L. S.]
CH'S ANGELO CONRAD. [L. S.]

Sealed and delivered in presence of—
(Signed) F. B. VINOT.

Approved:

W. B. WOODS, *Judge.*

117 *Assignment of errors.—Filed July 8th, 1872.*

Supreme Court of the United States.

C. M. CONRAD, OWNER OF TEN LOTS OF ground, pl'ff in error,
vs.
UNITED STATES, DEF'TS IN ERROR.

And now comes into court Charles M. Conrad, and says that in the record and proceedings and decree in this case there is manifest error to his prejudice in this, to wit:

That so much of said decree of the circuit court as declares that the sale of the property condemned stands confirmed, and that the plaintiff is entitled to receive the nett proceeds of said property (less encumberances paid) is contrary to law, the question whether said sale is valid or not not being involved in this suit, nor having been in any way submitted to the court, and the persons interested not being all parties herein.

Wherefore he prays that said judgment of the circuit
118 court be amended and be reversed in so far as it declares that the plaintiff in error is entitled to be paid the net proceeds of the property sold under the said judgment, but that the sale do stand confirmed.

(Signed) C. M. CONRAD & SON,
BILLINGS & HUGHES,
Attorneys for plaintiff in error.

119 *Reasons referred to in the decree.*

Circuit court of the United States, district of Louisiana.

UNITED STATES
vs.
844 LOTS & 10 SQUARES OF GROUND, THE property of John Slidell. } No. 6158. On appeals and writ of error.

Under the act of July 17th, 1862, entitled "An act to suppress insur'ection, to punish treason and rebellion, to seize and confiscate the property of rebels and for other purposes," the marshal of the United States for the district of Louisiana, on the 15th of August, 1863, seized the property in question in this case, as the property of John Slidell, and on the 15th of September, 1863, the district attorney of the United States for the same district filed a libel or information for the confiscation of said property. The libel charges that John Slidell, subsequently to the passage of the act, did act as an officer of the army or navy of the rebels in arms against the Government of the United States, or as a member of congress, or as a judge, or as a cabinet officer, or as
120 a foreign minister, or as a commissioner of the so-called Confederate States of America; or that while owning property in a loyal State or territory, &c., he did give aid and comfort to the rebellion.

Other charges were made against him of the same general character, and it was claimed that by reasons of the premises, the property described in the libel was forfeited to the United States and ought to be condemned to their use; and prayed process against the property and the owners thereof, and all persons interested or claiming an interest therein, to warn them to appear and answer their information. Process was accordingly issued and duly published.

Several persons appeared and filed petitions of intervention, setting up title to certain portions of the land seized, or liens, by way of mortgage, or otherwise upon portions thereof.

John Arrowsmith claimed title to several squares in New Orleans, as having been purchased by him many years before.

121 The Citizens' Bank of Louisiana claimed a mortgage upon a portion of the property to secure a stock-note for $4,104, due the 1st of June, 1863; and also a mortgage on another portion to secure them for advances upon a letter of credit given to Slidell on the 3d of

September, 1861, upon Messrs. F. Ad. Marcuard & Co., of Paris, upon which he had drawn $25,000, prior to the 13th of May, 1862. The latter mortgage was registered May 2d, 1862.

F. A. Marcuard, a citizen of France, claimed a mortgage lien upon certain portions of the property to secure certain loans of money made by him to Slidell, in Paris, namely, 250,000 francs on the 14th of June, 1862, payable in one year; which mortgage was received at New Orleans, by Eugene Rousseau, agent of Marcuard, July 14th, 1862, & recorded on the same day, before the appointment of a register by General Butler; and afterwards, again recorded on the 29th July, 1862, by a recorder appointed by him, and deposited with a notary, Aug. 4th, 1862, and again recorded with the act of deposit on the 9th
122 August, 1862. On the 11th August, 1862, Gen. Butler issued an order for the confiscation of Slidell's property, and the rents were afterward received by the militarys authorities on the property mortgaged.

Nicholson & Co. claimed a lien on certain property for laying the Nicholson pavement.

The State of Louisiana claimed a lien for certain taxes due.

Mrs. Gaines claimed to be the owner of certain lots specified in her petition.

The Merchants' Bank of New Orleans claimed a certain brick building in which their banking business had been carred on, and an equitable interest in the lot on which, &c., by virtue of a certain agreement.

Oritz Huppenbauer, a tenant of two lots, claimed to have largely increased their value by making permanent improvements, and desired an equitable allowance therefore.

In the principal cause of confiscation a default was taken on the 18th of April, 1864, and a decree of condemnation rendered on the 18th of March, 1865.

Various proceedings were had and considerable evidence was taken upon the several interventions, and decrees were made by the
123 district *district* court in each case, favorable or unfavorable to the claim presented.

Amongst others a decree was made on the 7th of July, 1865, dismissing the claim of the Citizens' Bank to a mortgage-lien for 100,000 francs, or $25,000 advanced upon their letter of credit given to Slidell in September, 1861.

Another decree was rendered on the same day, dismissing the claim of Marcuard to a mortgage-lien for 250,000 francs lent to Slidell in Paris.

On the 5th of May, 1866, the court dismissed the claim of the Merchants' Bank, of New Orleans. From all these decrees appeals were regularly taken by the intervenors, and one of the questions before this court is, whether an appeal lies in such cases. A motion has been made to dismiss the appeals on the ground that the proper remedy for revising the judgment or decree of the district court is a writ of error and not an appeal.

It has undoubtedly been decided by the Supreme Court, in the case
124 of Armstrong's Foundry, (6 Wallace, 766,) and other cases, that the proceedings for confiscation are proceedings at common law, and not in admiralty or equity, and therefore require a jury for the trial of issues of facts, and a writ of error to revise the judgment. This view is corroborated by the recent cases of Garnett vs. The United States, McVeigh vs. The United States, and Miller vs. The U. S., reported in 11th Wallace.

But intervention of third parties, made during the course of the proceedings, setting up some claim to or lien upon the property, are *of* often in the nature of a bill in equity, and require an equitable proceeding to ascertain and establish the rights of the parties.

They are especially so when they seek to establish a lien upon the property or any portion thereof, and to subject it, or the proceeds of it, to the payment of a debt or other claim, having priority over the claim of the Government, or constituting a legal charge upon the property when the cause of confiscation occurred.

I conceive the claims of the intervenors in this case who have ap-
125 pealed as before stated to be of this kind. Hence, in my judgment, no trial by a jury was requisite in reference to these claims, and the decrees rendered in reference thereto are subject to appeal rather than to writ of error. Whether they would come up as outbranches of the record, and be subject to review upon a writ of error brought to the principal judgment in the case, it is, perhaps, unnecessary to decide.

I hold, therefore, that the appeals taken in this case by the intervenors above named were properly taken, and should not be dismissed.

The next question is, whether they were well taken, as the district judge has not assigned his reasons for dismissing the claims. I am somewhat at a loss to know the precise reasons on which his decision
No. 3647. was founded. In the case of the Citizens' Bank, I presume the ground must have been, that the letter of credit was manifestly given to Slidell to enable him to accomplish his mission to France, in the service of the confederate cause. It has been re-
126 peatedly decided at the circuit, and in the cause of Hanauer vs. Doane, 12 Wall., 342, by the Supreme Court, that a contract made in furtherance of the rebellion, or in aid of the confederate cause, is void, and cannot receive the aid of the courts. The furnishing of Slidell with a letter of credit when he went to Paris as the emissary of the confederacy was so manifestly intended to subserve this end, that I cannot disturb the decree dismissing the claim.

The case of Marcuard, however, is different from any which has yet been decided.

The precedents have all been cases in which the transaction was between citizens of the United States owning allegiance to the Government thereof. But Marcuard was a citizen of France, and the loan made by him to Slidell was made in Paris. It was a loan of money made by a neutral on neutral territory, to an enemy, or at most to a citizen of the United States engaged in hostile operations against the United States.

An innocent loan made to such a person, unless made for
127 the purpose of enabling him to carry on hostilities, is a valid transaction everywhere.

And the neutral is not bound to presume that such hostile use is to be made of the money loaned.

One witness states that there was a general notoriety that Slidell was purchasing gun-boats in Paris for the use of the confederacy, but there is no direct evidence on the subject, and there is no evidence, except the amount of the loan, that the money was borrowed for other than private purposes. And the amount is hardly sufficient to throw the burden of proof on the lender.

It seems to me that the case does not show sufficient evidence of notice to Marcuard that any unlawful use was to be made of the money loaned by him to defeat his claim.

Supposing the debt to be a valid one, was it a lien or charge upon

the property in question, when the cause of confiscation occur'ed?
128 This cause cannot be said to have occurred before the passage of the act of Congress, July 17th, 1862, but from that moment it existed, and the general rule is, that a judgment of confiscation relates back to the act which causes it. The question, then, is reduced to this, whether Marcuard's lien on the property in question had become complete on the 17th day of July, 1862? New Orleans was then in the possession of the United States forces; military rule prevailed; all civil authority emanated from the power or existed at the sufferance of the United States military authorities from the occupation of the city, early in May, 1862. Could Slidell, a declared rebel and enemy in Paris during this period, transfer or encumber property located in New Orleans within the military lines of the United States? If he could do it as to third persons, could he do it as to the United States? Had he been in the confederacy, he could not have done it at all.

For in that case every attempt to deal with property within the Union lines would have been abortive and void.

129 It was forbidden by public proclamation of the President and by the usages of belligerents. Did his residence in France give any greater validity to his acts as against the Government of the United States. In my judgment it did not. And Marcuard, in taking a mortgage from Slidell on property within the Union lines, took the risk of the exercise by the Government of the United States of its rights, as a sovereign power engaged in war, to confiscate the property of its enemies.

I am, therefore, of opinion that the decree upon the intervention of Marcuard must be affirmed.

The next case is that of The Merchants' Bank of New Orleans. This company held a lease granted by Slidell in 1850, to John Robb & Co. for ten years, at a certain rent. The lessees covenanted to put up on the lots leased buildings, to cost at least $15,000. At the end of the term, Slidell was to pay them the value of the building, at an appraisement. The bank claimed a lien, by virtue of this contract,
130 for the value of the buildings. The district court rejected the claim. It is difficult to see on what ground a lien for this sum can be maintained. The matter existed simply in covenant. The lease does not contain*ed* a work which looks like creation or expectation of a lien on the property itself.

The bank complains that Fish, the purchaser of the property, was permitted to except to the intervention; whereas he had no right to appear in the suit at all, because the sale had been suspended and the marshal had not been ordered to proceed.

But it matters not that Fish had no interest. The question is, had the bank any interest?

Fish, as amicus curiæ, might call the court's attention to the want of interest which the bank had. Unless the bank had a lien, the court cannot reverse*d* the decree. In my judgment, the bank had no lien, and therefore the decree is affirmed.

131 I have not adverted to certain general questions, applicable to the entire proceedings for confiscation, because they have been settled by adjudications of the Supreme Court, made since the argument of these cases. That court has disposed of the constitutionality of the act, the power of Congress to pass it, and the character of that part of it under which the proceedings are taken.

In the case of Miller vs. The United States, 11 Wall, 268, it has decided that the act has two distinct parts, each part having a separate

object. The first four sections provide for the punishment of treason and rebellion as criminal offences, and are permanent in their character. The remaining sections provide for the confiscation of the property of certain designated parties as enemy's property, and are temporary in their character, being intended for the purpose of insuring the speedy termination of the rebellion. The proceedings under these sections are proceedings in rem, conforming as near as practicable to proceedings in admiralty, in cases of admiralty and maritime jurisdiction, and to
132 revenue cases where the seizures are made on land. In the latter case, after seizure an information is filed by the law-officer of the Government, setting forth the facts upon which the confiscation is claimed.

Whether the information is called a libel of information or simply an information, is of no consequence. The same court has cognizance of the case whether it is in admiralty or a different revenue proceeding.

The nature of the case determines its character. If a claimant of the property appears and contests the material facts alleged, as, for example, the guilt of the owner or his ownership of the property, the issue is to be tried by a jury.

If no persons appear to answer the merits, a judgment is taken by default, and the court proceeds to examine witnesses or other evidence ex parte, by way of inquest, to ascertain the principal facts in the case. This examination does not require the intervention of a jury,
133 being only intended to inform the conscience of the court.

If a third person intervenes for the purpose of setting up some charge or lien upon the property and not of resisting the confiscation, collateral proceedings are had suitable to the nature of the case, as before stated. (See the cases of Garnett, McVeigh, and Miller, in 11 Wallace, and of the Union Insurance Company, Armstrong's Foundry, and Hart, in 6 Wallace.)

This general view of the nature of the proceedings will serve to answer at once many of the objections which were so elaborately argued when these cases were heard.

A belligerent has a right to take such course, and impose such conditions with regard to the confiscation of enemy's property, as it sees fit. The rules which it prescribes are not to be questioned by any code, except the law of nations and its own constitution. The rights of a government against its own citizens in insurrection, are not less, but are rather greater than those it may exercise towards a foreign
134 enemy. But in either case the enemy's property may be confiscated simply as such, if the government so determine. Congress, by the act of July 17th, 1862, directed property to be seized and confiscated as enemy's property; but only the property of certain classes of persons. This discrimination renders necessary, when issue is taken upon the information, an inquiry upon the guilt or innocence of the owner; not for the purpose of a criminal conviction and sentence, but for the purpose of determining the status of the property seized. Hence, many rules, constitutional and otherwise, which required to be observed in criminal prosecutions, have no applications to these proceedings.

The case is altogether unlike that of an attainder. There the criminal prosecution and conviction are the principal thing. The attainder, like disqualification to be a witness after conviction of perjury, follows as an incident of the convi'tion. Here the confiscation is the prin-
135 cipal thing, and an inquiry into the acts or conduct of the owner of the property may or may not be required by the law. If it is required, it is only as a subsidiary thing, and involves no personal

sentence or condemnation. Hence all those objections which are founded on the necessity of a regular indictment, of the personal presence, of a trial by jury, &c., &c., are out of place. Where the information is traversed, a trial by jury is necessary, it is true, but for another reason, and not because the proceeding is a criminal one; for the reason, namely, that the VII amendment to the Constitution requires a trial by jury in all suits at common law, where the value in controversy exceeds twenty dollars.

These considerations renders it unnecessary to examine more in detail the various points that were raised on the argument.

Having held the appeals taken by the Citizens' Bank, by Marcuard, and by the Merchants' Bank, to be properly taken, the several writs of error sued out by those parties will be dismissed.

136 No. 6158. The next case to be considered is the writ of error of John Slidell, No. 6158.

The final judgment of condemnation was rendered on the 18th of March, 1865, and the writ of error was sued out on the 17th of March, 1870. It was sued out, therefore, just in time to save the statute of limitations. The Supreme Court, in the case of McVeigh vs. The United States, 11 Wall, 259, decided that the owner of the property, through a rebel, and within the confederates' lines, was entitled to appear and contest the proceedings, or bring a writ of error upon the judgment. The writ, therefore, is regularly brought, and we are obliged to examine the record.

Many of the questions raised have been already disposed of, and need not be again adverted to. There is one objection, however, that has given me some trouble, namely, the insufficiency of the information. It is one of the most remarkable specimens of loose pleadings and uncertain statement that I remember ever to have seen. After having duly alleged the seizure of the property and fully described it, it states

137 that John Slidell was, at the time of filing the information, and on the 17th of July, 1862, and previously, the owner thereof. Then, having stated the existence of the rebellion, and the passage of the confiscation act, it proceeds to allege—

V. That the said John Slidell, subsequently to the said 17th of July, 1862, did act as an officer of the army or navy of the rebel' in arms against the Government of the United States, or as a member of congress, or as a judge of a court, or as a cabinet officer, or as a foreign minister, or as a commissioner, or as a consul of the so-called Confederate States of America, or that, while owning property in a loyal State or Territory of the United States, or of the District of Columbia, he did glve aid and comfort to the rebellion against the United States, and did assist such rebellion.

Now, from this allegation, can any mortal man tell what John Slidell did? The next article is of the same ambiguous and inconsequential nature.

The extreme ambiguity of these charges is something more than a matter of form; it amounts to a substantial defect. There is, in

139 truth, no charge at all. There is no charge that Slidell acted as a foreign minister of the confederacy. The allegation is that he either did that or something else, but we are not informed what. If the defect were one of form, it might be amended; but, being substantial, it seems to me it is fatal.

The other articles of the information do not save it. The seventh articles alleges that John Slidell, subsequently to the 17th of July, 1862, within a State or Territory of the United States, was engaged in

armed rebellion against the Government, and did not, within 60 days after the proclamation of the President, made on the 25th of July, 1862, cease to aid and abet such rebellion, &c., and the eight' article is of similar character to the seventh. Now, not only is the same ambiguity kept up in these articles as in the previous ones, but they do not set forth any of the offences which in the statute are made the basis or cause of confiscation. They are evidently meant to be assigned under the sixth section of the act. But that section refers to persons who, in any
139 State or Territory of the United States other than those named as aforesaid, were engaged in the rebellion. Now, the States named as aforesaid were the loyal States, which had just been named in the last clause of the 5th section. Therefore, the States or Territories other than those were the disloyal or rebellious States. So that the 6th section of the act only refers to persons who, within any disloyal or rebellious State or Territory, were engaged in the rebellion.

Yet the seventh article of the information merely alleges that John Slidell, within a State or Territory of the United States, was engaged in rebellion. It does not make a charge within the statute.

The whole information, therefore, is substantially defective, and the judgment must be reversed.

The same defect is fatal to the judgments in the cases of Charles M.
No. 6039. Conrad vs. The United States, No. 6039, and in Francis H.
No. 6079. Hatch vs. The United States, No. 6079, and the judgments in those cases must also be reversed.

In the cases of Duncan F. Kenner vs. The United States,
140 No. 6038. No. 6038, Abel Ward Bosworth vs. The United States,
No. 6082. 6082, no substantial defect appears in the informations, each taken as a whole, and I have been unable to perceive any other ground on which the judgment in those cases should be reserved. They are therefore affirmed.

It is perhaps not necessary at this time to decide what will be the effect of reversing those judgments which have been reversed. But as the subsequent proceedings may depend on a solution of the question, and as the parties in interest will be desirous of knowing the position in which they stand, it is proper that I should give my opinion on the point. It is a general rule that a judicial sale under a judgment which the court had jurisdiction to render, will stand, although the judgment itself be subsequently reversed for error.

I see no reason why that rule should not apply in these cases. It is true that a judgment of reversal usually contains a direction that the plaintiff in error be restored in all things to that which he hath
141 lost by reason of the erroneous judgment.

But the mode of making this restoration where a sale of property has taken place under the reversed judgment, is by awarding to the plaintiff in error the proceeds of sale.

This will be the proper course in these cases.

One question to which considerable attention was given upon the argument was, whether anything more than an estate for the life of the owner was transferred by the confiscation proceedings. Indeed, it was alleged as a ground of error, that all the right, title, and estate of the owner was condemned and sold. I do not regard this form of judgment as material; although, on looking at the judgments, it will be found that the form of judgment pursued was "that the said 16 lots of ground, the property of A. B., be, and the same are hereby, condemned as forfeited to the United States," without any definition or limitation of the estate forfeited. I regard the judgments as to be construed

by the law which authorizes the confiscation to be made,
142 and am of the opinion that the several sales by the marshal had the effect of transferring only such estate as it was lawful to sell. What that estate is is the question. The joint resolution approved at the same time with the confiscation act provides that no punishment or proceedings under the act shall be so construed as to work a forfeiture of the real estate of the offender beyond his natural life.

It seems to me that this provision extends to the whole act and to "the proceedings" for confiscation, as well as to the prosecution for the crimes of treason and rebellion. It may be very true, and I am inclined to think it is true, that the constitutional provision, which declares that no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted, does not apply to the confiscation of enemy's property, even though those enemies be rebels against the Government, and therefore guilty of treason.

143 But whether it applies or not, Congress, from respect to the scruples of the President, or for other reasons which seemed to it sufficient, did enact, as it had a right to do, that no proceedings under the confiscation act should be so construed as to work a forfeiture of real estate beyond the natural life of the offender. And I can see no way in which this limitation can be confirmed to criminal proceedings under the act.

It seems to me that, by a fair interpretation, it extends to all proceedings by which a forfeiture is effected or adjudged.

144 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foreforegoing 143 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the cause of C. M. Conrad, owner of ten lots of ground, plaintiff in error, vs. The United States, defendants in error, No. 6039 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 21st day of August, A. D. 1872.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

[5-c't int. rev. stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate, as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law; and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 21 day of August, A. D. 1872.

E. H. DURELL, *Judge.*

[5-c't int. rev. stamp, canceled.]

145 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Charles M. Conrad, owner of ten lots of ground, plaintiffs in error, & The United States, defendants in error, a manifest error hath happened, to the great damage of the said Charles M. Conrad, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 6039. C. M. Conrad, owner of ten lots of ground, plaintiff in error, versus The United States, defendants in error. Writ of error. Filed June 27th, 1872. F. B. Vinot, d'y cl'k.

146 THE UNITED STATES OF AMERICA,
United States Circuit Court, District of Louisiana:

The President of the United States to the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Charles M. Conrad, owner of ten lots of ground, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 29th day of June, in the year of our Lord one thousand eight hundred and seventy-two.

W. B. WOODS, *Judge.*

147 (Indorsed:) United States circuit court. No. 6039. C. M. Conrad, owner of ten lots of ground, plaintiff in error, vs. The United States, defendants in error. Citation.

Marshal's return.

Received, July 24, '72, by the U. S. marshal, and, on the 26th day of July, 1872, served a copy hereof on the United States of America, by handing the same to J. R. Beckwith, their attorney for the district of Louisiana, in person, in this city.

New Orleans, July 29, 1872.

S. B. PACKARD,
U. S. Marshal.
By C. R. STEELE,
D'y U. S. Marshal.

On this twenty-ninth day of July, 1872, personally came and appeared before me the subscriber, C. R. Steele, a deputy marshal for the district of Louisiana, who, being duly sworn, declared that, on the 26th day of July, 1872, he served a copy of the within citation on the United States of America by handing the same to J. R. Beckwith, their attorney for the district of Louisiana, as stated in his official return hereon.

C. R. STEELE,
D'y U. S. Marshal.

Sworn to and subscribed before me.

F. B. VINOT, *U. S. Comm'r.*

(Indorsement on cover:) No. 417. Charles M. Conrad, plaintiff in error, vs. The United States. Louisiana C. C. U. S. Filed 12th September, 1872.

Supreme Court of the United States.

OCTOBER TERM, 1873.

—o—

No. 201.

—o—

C. M. CONRAD, OWNER OF TEN LOTS OF GROUND,

PLAINTIFF IN ERROR,

VS.

THE UNITED STATES,

DEFENDANT IN ERROR.

—o—

Error to Circuit Court of United States for District of Louisiana.

—o—

C. M. CONRAD & SON,
For Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1873.

No. 201.

—o—

C. M. CONRAD, OWNER OF TEN LOTS OF GROUND,

PLAINTIFF IN ERROR,

VS.

THE UNITED STATES,

DEFENDANT IN ERROR.

—o—

Error to Circuit Court of United States for District of Louisiana.

—o—

The only error assigned in this case, is that portion of the judgment of the Circuit Court which confirms the sale made by the Marshal.

The first question that presents itself is, whether the Court had the right to pass upon the effect of the decree. The Judge himself, in his opinion, intimates a doubt on that point, and we think that doubt was well founded.

The purchasers of the property are in possession, and enjoying its revenues; of course, therefore, the original owners are anxious to have a decision on the title as soon as it can be obtained. Believing that the safer course for that purpose was to have the decree of condemnation reversed preparatory to a di-

when the Circuit Court anticipated the decision on a direct action by this decree. Nothing was said on this subject at the trial below. Several other cases arising under the act of 17th July, were argued with this one. The argument, both oral and written, was very full, but it was confined on all sides to the single question, whether the decrees of condemnation should be confirmed or reversed; not a word was said by any one in regard to the validity of the sales made after the decrees were rendered.

We trust, therefore, we will be excused if we dilate upon this subject a little more than might seem necessary.

1st. The language of the Judiciary Act of 1789, in defining the appellate jurisdiction of the Circuit Court, is the same as that which defines that of this Court, to wit: that writs of error or appeals shall lie "from all final judgments and decrees." The final judgment, from which the writ of error from the Circuit to the District Court was taken in this case, was the judgment condemning the property as forfeited,—and we think that the only question the Circuit Court was called upon to decide was, whether that judgment should be confirmed or reversed.

What would be the effect of that judgment, whether a sale of the property condemned, made under the 7th section of the act, would or would not be defeated by a reversal of the decree of condemnation, was a question which, of course, had not been and could not have been decided by the District Court. In deciding it, therefore, the Circuit Court assumed original jurisdiction in a case brought before it by writ of error—thus at the same time, and in the same case, exercising both original and appellate jurisdiction.

2d. The purchasers of the property were not and could not be made parties to the writ of error. No judgment rendered therein could affect their rights. If the Circuit Court, instead of confirming the sales, had declared them null, could a writ of possession have issued on such a judgment? If not, how can effect be given to a judgment confirming the sales? Can a Court which is not competent to render a judgment in favor of

The rule is well established, that a judgment is not admissible against a party, unless, had it been in his favor, it would have been equally admissible. The rule of reciprocity first laid down in the celebrated decision of Ch. J. De Grey, in the "Duchess of Kingston's case," has been, we believe, invariably followed in this country.

20 Howell's State Trials, p. 538.
Wood vs. Davis et al, 7 Cranch, 271.
Davis vs. Wood, 1 Wheat. 6.
1 Greenleaf Ev. § 523-4.

Even the judgment for the small pittance that was paid into the U. S. Treasury, could not, we presume, be realized. We could not even bring a direct action against the Government for the money, but would have to petition Congress. How then could the Circuit Court render a judgment against it without a suit.

Passing from the right of the Court to render the judgment to the judgment itself—is it correct?

Judge Bradley says, "It is a general rule that a judicial sale, under a judgment which the Court was competent to render, will stand, although the judgment itself be subsequently reversed for error. I see no reason why that rule should not apply to this case."

We do not deny that the general rule in regard to the effect of reversals for error, on sales made under judgments while in force, is correctly laid down by the Judge; but we venture to suggest several reasons why that rule does not apply to this case.

In the first place the Judge assumes, that the Court which rendered the judgment was competent, whereas this we deny, and think we have shown, in the case of U. S. vs. C. M. Conrad, No. 283, that on several grounds the Court was without jurisdiction in this case.

Secondly. We deny that the sales made by the Marshal, of the property condemned, were judicial sales.

Thirdly. Even if the sales were judicial sale the title of

Judicial sales are sales made under a judgment, in order to carry a judgment into effect. Under what judgment were the sales made in this case? Not surely under the decree of condemnation. That required no sale to carry it into effect. The 6th section of the act declares that the property shall by the decree itself "become the property of the Government"—the title passed *ipso facto* from the defendant to the Government as soon as the decree was rendered, supposing that decree to be valid. Indeed, but for this clause in the act the title of the offender would have passed to the Government before the decree was rendered, and the latter would have related back to the commission of the offense.

Blackstone Comm., Lib. 2, 267—Lib. 4, 381-2.
Gelston vs. Hoyt, 3 Wheat. 311.
Caldwell vs. U. States, 8 How. 366-381.
United States vs. 56 bbls. whiskey, Am. Law Reg. Vol. 15, N. S. 32.
United States vs. 1961 bags of coffee, 8 Cranch, 399.

In fact, forfeiture is considered as much a mode of transferring the title to property as sale, or any other mode.

See Blacks. Comm., Lib. 2, p. 267.

In Caldwell vs. U. States, above cited, it is called by this Court "a statutory transfer of the property."

Such is the general law. Congress, however, (in view no doubt of the hardship of interfering with *bona fide* purchases made after the commission of the act from which the forfeiture resulted, but before condemnation,) thought proper to relax this severity in the act of 17th July, 1862, and to apply to cases arising under that act the rule which is everywhere adopted in maritime captures, to wit: to consider the title as only vested in the Government from the date of the decree of condemnation.

Kent's Comm., Vol. I, pp. 101-102.

It is evident, therefore, that the title of the Government

In Miller's Executor, vs. U. S., this was not only admitted, but urged by the Attorney General. 11 Wall. pp. 268–289.

The sale, therefore, authorized by the act was for a very different purpose than to complete the title, viz: to provide means "for the support of the army," as required by sec. 5.

The 7th section authorizes the Court "to dispose of the property." This expression includes the power to sell, but does not exclude other modes of disposition.

The 8th section also authorizes the Judge to establish suitable forms for transferring titles to purchasers. These provisions manifestly presuppose that the title to the property was already vested in the Government. If the object had been to carry out the decree of confiscation, we have seen that it was not only unnecessary, but absurd. Besides, why was it necessary, on that supposition, to authorize the Judge to prescribe the forms of sale. The power to execute its own judgment is inherent in every Court, and the forms of all judicial sales already exist and are familiar to every Court.

Moreover, if the property was not supposed to belong to the Government, what right had Congress to authorize the Court, in effect, to dispose of it as the Judge might see fit?

If, on the other hand, we consider the property as having been transferred from the offender to the Government by the decree of condemnation, every part of the law is intelligible and consistent. Congress intended, by these provisions, to constitute the District Judges the agents of the Government for the purpose of disposing of the properties that had been by them respectively condemned. In the execution of this trust a great latitude of discretion was properly left to them, both in regard to the mode of disposing of the property, and in regard to the terms and conditions on which the disposition should be made.

The duties that were thus devolved on the Courts were not only not within the scope of their ordinary authority or jurisdiction as prescribed by law,—they were not judicial in their nature, but purely ministerial. The same powers might, with equal propriety, have been conferred on the District Attorney, or the Marshals within their respective districts. If the sale

such by the mere fact of its having been made by order of a Judge. Even if Congress had expressly declared that such was its character, this Court has said that "Congress cannot bring under the judicial power a matter which, from its nature is not a subject for judicial determination." Murray's Lessee vs. Hoboken Land Co., 18 How. 284. But we have seen that Congress has done nothing of the kind. It is because we thought that a careful analysis of the law would make this apparent, that we have gone into this examination; but, in the view we take of the case, it is immaterial whether the sale was a judicial sale or not.

In judicial sales all that is sold is the right or title of the party on whose behalf or account the sale is made. In Sheriff's (or Marshal's) sales it is the title of the defendant. In sales by the Syndics or managers, or assignees of bankrupt or insolvent estates, it is the title of the bankrupt or insolvent. In sales made by executors, administrators, &c., it is the title of the deceased.

Now, if we are correct in the position we have assumed that under this act the title to the property condemned is transferred to the Government, whether by the act of forfeiture or by the decree of condemnation, it follows that what was ordered to be sold, what alone could be sold, and what was sold by the Marshal in this case, was the title of the Government to the property. The purchaser therefore acquired all the rights of the Government to the property, but he acquired nothing more. If the Goverment had a valid title, the purchaser has one—not otherwise.

"*Nemo in alienum plus juris transferre potest quam ipse habet.*"

One of the errors assigned in the Circuit Court was that by the decree of the District Court, the property had been condemned as absolutely forfeited, and the title *in fee* thereby vested in the U. S.; whereas it should have been condemned as forfeited only during the life of C. M. Conrad, the offender and alleged owner thereof.

Since then the case of Bigelow vs. Forrest has been decided by this Court, wherein it was held that under a similar decree

the property condemned was only forfeited during the life of the offender.

This opinion was followed in the Circuit Court in the present instance. We will not, therefore, assign the decree in this case as erroneous in that respect, unless this Court should be of opinion that it does condemn the property in fee. If this Court does so understand the decree, then we assign this as error.

C. M. CONRAD & SON,
For Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1873.

C. M. CONRAD, Owner of Ten Lots of Ground,
PLAINTIFF IN ERROR,

vs.

THE UNITED STATES, Defendant in Error.

No. 201.

Error to Circuit Court of United States for District of Louisiana.

C. M. CONRAD & SON,
For Plaintiff in Error.

M'GILL & WITHEROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1873.

C. M. CONRAD, OWNER OF TEN LOTS OF GROUND,
Plaintiff in Error,

vs.

THE UNITED STATES, Defendant in Error.

No. 201.

ERROR TO THE CIRCUIT COURT OF UNITED STATES FOR THE DISTRICT OF LOUISIANA.

This is a proceeding *in rem*, founded on the act entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," passed July 17, 1862. (Stat. , p. .)

The proceedings were directed against C. M. Conrad, to whom the property libelled was alleged to belong. The district court condemned the property as forfeited to the United States, and ordered it to be sold by the marshal of the district, (p. 19,) which sale was accordingly made, (p. 20.) A writ of error was taken from this judgment to the circuit court of the Louisiana district, by which the following judgment was rendered: "For reasons assigned and on file in suit No. 6158 of the docket, it is ordered that the decree of confiscation pronounced by the district court, on the 3d February, 1865, be avoided and reversed; and it is now ordered, adjudged, and decreed by this court, that the libel of information in this cause be dismissed with costs, and that the plaintiff in error is entitled to be paid the net proceeds of the property sold under said judgment,

(less the incumbrances paid,) but that the said sale do stand confirmed." (P. 36.)

We assign for error the last clause in said judgment, to wit, that whereby it is adjudged that the sale made by the marshal stands confirmed, and that the owner thereof is only entitled to the proceeds of said sale less the incumbrances paid.

We maintain that this portion of the judgment is erroneous—

1. Because the court had no right to pass upon the effect of said sale.

2. Because the opinion of the court as to its effect is in itself erroneous.

As regards the first point, to wit:

Whether the court had the right to pass upon the effect of the decree, the judge himself intimates a doubt. (See opinion, p. 44.) We think that doubt was well founded.

The purchasers of the property are in possession, and enjoying its revenues; of course, therefore, the original owners are anxious to have a decision on the title as soon as it can be obtained. Believing that the safer course for that purpose was to have the decree of condemnation reversed preparatory to a direct action, they were slowly wending their way to this court when the circuit court anticipated the decision on a direct action by this decree. Nothing was said on this subject at the trial below. Several other cases arising under the act of 17th July, were argued with this one. The argument, both oral and written, was very full; but it was confined on all sides to the single question, whether the decrees of condemnation should be confirmed or reversed; not a word was said by any one in regard to the validity of the sales made after the decrees were rendered.

We trust, therefore, we will be excused if we dilate upon this subject a little more than might seem necessary.

1. The language of the judiciary act of 1789, in defining the appellate jurisdiction of the circuit court, is the same

as that which defines that of this court, to wit: that writs of error or appeals shall lie "from all final judgments and decrees." The final judgment, from which the writ of error from the circuit to the district court was taken in this case, was the judgment condemning the property as forfeited; and we think that the only question the circuit court was called upon to decide was, whether that judgment should be confirmed or reversed.

What would be the effect of that judgment, whether a sale of the property condemned, made under the 7th section of the act, would or would not be defeated by a reversal of the decree of condemnation, was a question which of course had not been and could not have been decided by the district court. In deciding it, therefore, the circuit court assumed original jurisdiction in a case brought before it by writ of error, thus at the same time, and in the same case, exercising both original and appellate jurisdiction.

2. The purchasers of the property were not and could not be made parties to the writ of error. No judgment rendered therein could affect their rights. If the circuit court, instead of confirming the sales, had declared them null, could a writ of possession have issued on such a judgment? If not, how can effect be given to a judgment confirming the sales? Can a court which is not competent to render a judgment in favor of a party be competent to render a judgment against him?

The rule is well established, that a judgment is not admissible against a party unless, had it been in his favor, it would have been equally admissible. The rule of reciprocity first laid down in the celebrated decision of Chancellor J. De Grey, in the "Duchess of Kingston's Case," has been, we believe, invariably followed in this country.

20 Howell's State Trials, p. 538.
Wood *v.* Davis *et al.*, 7 Cranch, 271.
Davis *v.* Wood, 1 Wheat., 6.
1 Greenleaf's Ev., § 523, 524.

Even the judgment for the small pittance that was paid into the United States Treasury could not, we presume, be realized. We could not even bring a direct action against the Government for the money, but would have to petition Congress. How, then, could the circuit court render a judgment against it without a suit?

Passing from the right of the court to render the judgment to the judgment itself, is it correct?

Judge Bradley says: "It is a general rule, that a judicial sale, under a judgment which the court was competent to render, will stand, although the judgment itself be subsequently reversed for error. I see no reason why that rule should not apply to this case."

We do not deny that the general rule, in regard to the effect of reversals for error, on sales made under judgments while in force, is correctly laid down by the judge; but we venture to suggest several reasons why that rule does not apply to this case.

In the first place, the judge assumes that the court which rendered the judgment was competent, whereas this we deny, and think we have shown, in the case of United States *v.* C. M. Conrad, (No. 283,) that, on several grounds, the court was without jurisdiction in this case.

Secondly. We deny that the sales made by the marshal, of the property condemned, were judicial sales.

Thirdly. Even if the sales were judicial sales, the title of the original owners was not affected by it.

Inasmuch as the purchaser only acquired that of the Government, not of the owners, we shall proceed to establish these two propositions.

Judicial sales are sales made under a judgment, in order to carry a judgment into effect. Under what judgment were the sales made in this case? Not, surely, under the decree of condemnation. That decree required no sale to carry it into effect. The 6th section of the act declares that the property shall, by the decree itself, "become the property of the Government." The title passed, *ipso facto*, from the defendant to the Government as soon as the decree was

rendered, supposing that decree to be valid. Indeed, but for this clause in the act, the title of the offender would have passed to the Government before the decree was rendered, and the latter would have related back to the commission of the offense.

Blackstone's Comm., Lib. 2, 267; Lib. 4, 381, 382.
Gelston *v.* Hoyt, 3 Wheat., 311.
Caldwell *v.* United States, 8 How., 366–381.
United States *v.* 56 bbls. whisky, Am. Law Reg., vol. 15, N. S. 32.
United States *v.* 1,961 bags of coffee, 8 Cranch, 399.

In fact, forfeiture is considered as much a mode of transferring the title to property as sale or inheritance.

See Blackstone's Comm., Lib. 2, p. 267.

In Caldwell *v.* United States, above cited, it is called by this court "a statutory transfer of the property."

Such is the general law. Congress, however, (in view no doubt of the hardship of interfering with *bona fide* purchases made after the commission of the act from which the forfeiture resulted, but before condemnation,) thought proper to relax this severity in the act of 17th July, 1862, and to apply to cases arising under that act the rule which is everywhere adopted in maritime captures, to wit: to consider the title as only vested in the Government from the date of the decree of condemnation.

Kent's Comm., vol. I, pp. 101, 102.

It is evident, therefore, that the title of the Government was complete as soon as the decree was pronounced, (supposing it to be valid.)

In Miller's Executor *v.* United States this was not only admitted, but urged by the Attorney General. (11 Wall., pp. 268–289.)

The sale, therefore, authorized by the act was for a very different purpose than to complete the title, viz: to provide means "for the support of the army," as required by sec. 5.

The 7th section authorizes the court "to dispose of the property." This expression includes the power to sell, but does not exclude other modes of disposition.

The 8th section also authorizes the judge to establish suitable forms for transferring titles to purchasers. These provisions manifestly presuppose that the title to the property was already vested in the Government. If the object had been to carry out the decree of confiscation, we have seen that it was not only unnecessary, but absurd. Besides, why was it necessary, on that supposition, to authorize the judge to prescribe the forms of sale. The power to execute its own judgment is inherent in every court, and the forms of all judicial sales already exist and are familiar to every court.

Moreover, if the property was not supposed to belong to the Government, what right had Congress to authorize the court, in effect, to dispose of it as the judge might see fit?

If, on the other hand, we consider the property as having been transferred from the offender to the Government by the decree of condemnation, every part of the law is intelligible and consistent. Congress intended, by these provisions, to constitute the district judges the agents of the Government for the purpose of disposing of the properties that had been by them respectively condemned. In the execution of this trust, a great latitude of discretion was properly left to them, both in regard to the mode of disposing of the property, and in regard to the terms and conditions on which the disposition should be made.

The duties that were thus devolved on the courts were not only not within the scope of their ordinary authority or jurisdiction, as prescribed by law—they were not judicial in their nature, but purely ministerial. The same powers might, with equal propriety, have been conferred on the District Attorney, or the marshals, within their respective districts. If the sale was not, in its nature, a judicial sale, it surely did not become such by the mere fact of its having been made by order of a judge. Even if Congress

had expressly declared that such was its character, this court has said that "Congress cannot bring under the judicial power a matter which, from its nature, is not a subject for judicial determination." (Murray's Lessee *v.* Hoboken Land Co., 18 How., 284.) But we have seen that Congress has done nothing of the kind. It is because we thought that a careful analysis of the law would make this apparent, that we have gone into this examination; but in the view we take of the case, it is immaterial whether the sale was a judicial sale or not.

In judicial sales, all that is sold is the right or title of the party on whose behalf or account the sale is made. In sheriff's (or marshal's) sales, it is the title of the defendant. In sales by the syndics or managers, or assignees of bankrupt or insolvent estates, it is the title of the bankrupt or insolvent. In sales made by executors, administrators, &c., it is the title of the deceased.

Now, if we are correct in the position we have assumed, that under this act the title to the property condemned is transferred to the Government, whether by the act of forfeiture or by the decree of condemnation, it follows that what was ordered to be sold, what alone could be sold, and what was sold by the marshal in this case, was the title of the Government to the property. The purchaser, therefore, acquired all the rights of the Government to the property, but he acquired nothing more. If the Government had a valid title, the purchaser has one, not otherwise.

"*Nemo in alienum plus juris transferre potest quam ipse habet.*"

We will add another reason why the rule that a sale made in execution of a judgment will stand, though the judgment be subsequently reversed, does not apply to this case.

This rule is intended to protect *bona fide* purchasers, who were strangers to the case, and are presumed to be ignorant of the errors or irregularities on account of which the judgment is reversed.

It does not apply, therefore, to a case where the plaintiff himself is the purchaser.

Graham *v.* Eagan, 15 La. Annual Reps., 97.
Taylor *v.* Thompson, 5 Pet., 370.

A fortiori it does not apply to a case like the present, where the attorney of the plaintiff is the purchaser, and the errors and irregularities for which the judgment was reversed, were committed by himself. He surely is not a stranger to said case; no presumption exists in his favor.

But we have seen that the sale in this case was not made in execution of a judgment, and that the latter executed itself. It is simply a case where the purty sues for the recovery of specified property, obtains a judgment declaring him to be the owner, and that judgment has been reversed. Was it ever pretended that the party in whose favor a judgment was rendered, in such a case, acquires by the judgment a title to the property in dispute which will stand, even though the judgment be subsequently reversed?

5 Martin's La. Reps., (N. S.,) 225.

C. M. Conrad & Son,
For Plaintiff in Error.

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In the Supreme Court of the United States.

OCTOBER TERM, 1873.

CHARLES M. CONRAD, *Plaintiff in Error,*
vs.
THE UNITED STATES. } No. 201.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1873.

CHARLES M. CONRAD, *Plaintiff in Error*,
vs.
THE UNITED STATES. } No. 201.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a case in error to the circuit court of the United States for the district of Louisiana, applied for by Charles M. Conrad to Honorable W. B. Woods, on the 28th June, 1872. (See Record, p. 36, foot; writ, p. 46; citation to counsel, and personal service on him, pp. 46 and 47.)

The case had been brought in error to the United States circuit court in Louisiana from the district court by Conrad. (See motion and petition, Rec., p. 1; writ and citation, and service, Rec., pp. 2 and 3.)

On the 9th August, 1863, the United States district attorney in Louisiana proceeded, by the means of a libel of information, against ten lots of ground in the city of New Orleans to procure their condemnation and forfeiture to the United States under certain provisions of the act of 17th June, 1862. (12 Stats., pp. 589, *et seq.*)

The causes of forfeiture and condemnation set forth in the libel are the acts imputed by its expression to

the owner of the lots, Charles M. Conrad, charging, in the alternative, that he was embraced in one of the classes of persons enumerated as enemies of the United States in the act of June 17, 1862, as will appear by reference to the 5th, 6th, 7th, and 8th sections of the libel of information, framed to correspond with and adopting the descriptive language of the act of Congress quoted. (See Rec., p. 6.)

Order of publication having been made, (see Rec., pp. 7 and 8,) a warrant of seizure was issued to the United States marshal, with a schedule of the property, ordering him to seize it, and admonish the owners and all persons interested to appear, (Rec., pp. 7, 8, and 9,) which was done.

No claim having been interposed, a judgment by default, and as if *pro confesso*, was ordered by the district court. (See Record, p. 12.)

On February 3, 1865, the United States district court condemned the property as forfeited to the United States. (See Record, p. 19.)

The property was sold under the judgment of the court in March, 1865, in the usual mode. (See Rec., p. 20.)

So matters remained until January, 1870, when C. M. Conrad, the former owner of the property, when condemned, appeared in the district court and sued out his writ of error to the circuit court. (See p. 1.)

In the circuit court, the judge ordered the decree of confiscation of the district court to be avoided and reversed; the libel of information to be dismissed with costs; the plaintiff in error in the circuit court, C. M. Conrad, to be paid the net proceeds of the property

sold under the judgment of the district court, less incumbrances paid; and that the sale stand confirmed. See Rec., p. 36.)

Both parties have sued out writs of error, C. M. Conrad assigns but one ground of error as follows, viz:

"The last clause of said judgment, whereby it is adjudged that the sale made by the marshal stands confirmed, and that the owner thereof is only entitled to the proceeds of the said sale less the incumbrances paid."

It is contended, on the part of the United States, there is no error in this part of the judgment; as to the other portions they have been discussed in the brief in No. 283.

POINTS.

First. The opinion of the circuit court on this question is correct.

It cannot be denied that the court in the first instance had jurisdiction of the most complete character over the whole subject-matter in controversy in the suit. The provisions of the act of June 17, 1862, are too clear and positive to admit of any doubt.

The law is well settled that where the court has jurisdiction the purchaser at a sale made under its order cannot be affected by any errors committed by the judge in the mode in which he reached his conclusions.

This is not denied by the plaintiff in error as the general principle, but he maintains the present case constitutes an exception, for he says that the sale of the property by the United States marshal was not a judicial sale.

This is a very singular denial. The 7th and 8th sections of the act of June 17, 1862, 12 Stat., p. 591, expressly directs as follows:

"SEC. 7. *And be it further enacted*, That to secure the condemnation and sale of any of such property, after the same shall have been seized, so that it may be made available for the purpose aforesaid, proceedings *in rem* shall be instituted in the name of the United States in any district court thereof, or in any territorial court, or in the United States district court for the District of Columbia, within which the property above described, or any part thereof, may be found, or into which the same, if movable, may first be brought, *which proceedings shall conform as nearly as may be to proceedings in admiralty or revenue cases*, and if said property, whether real or personal, shall be found to have belonged to a person engaged in rebellion, or who has given aid or comfort thereto, *the same shall be condemned as enemies' property*, and become the property of the United States, and may be disposed of as the court shall decree, and the proceeds thereof paid into the Treasury of the United States for the purposes aforesaid.

"SEC. 8. *And be it further enacted*, That the several courts aforesaid shall have power to make such orders, establish such forms of decrees and sale, and direct such deeds and conveyances to be executed and delivered by the marshals thereof where real estate shall be the subject of sale, as shall fitly and efficiently effect the purposes of this act, and vest in the purchasers of such property good and valid titles thereto. And the said courts shall have power to allow such fees and charges of their officers as shall be reasonable and proper in the premises."

In pursuance of these provisions of law, the judge of the district court at the same time he decreed the condemnation of the lots, ordered the clerk to issue a writ of *venditioni exponas* to the marshal of the district, re-

turnable on 15th March, 1865, and that upon the return thereof the proceeds be distributed according to law. (Record, p. 19.)

The property was sold in obedience to this order, (Record, p. 20;) and it was a judicial sale, carrying with it all the consequences pertaining to transfers of that character.

Second. It is further objected, that as the property was condemned and forfeited to the United States, admitting the sale to be a judicial one, the title of the owner was not divested, since it is said the judgment of the court transferred the property to the United States, and under the writ of *venditioni exponas* the title of the United States, and not that of the owner, passed to the purchaser.

In reply, we say either this property belonged to Charles M. Conrad, or it did not. If it did not belong to him, he has now nothing to complain of. If it did belong to him he was divested, under the law, and his interest passed to the United States, according to the view expressed by the plaintiff in error, and that interest the United States sold at the marshal's sale; then, as the United States had acquired the interest of Conrad, it was precisely his interest which the marshal's sale passed to the purchaser, so that the purchaser has the interest of Conrad, if the property belonged to Conrad when it was condemned.

Third. Among four purchasers at the marshal's sale, Mr. Waples, the district attorney, was one, and this is urged by plaintiff in error as a reason why the case

should be taken out of the ordinary rule. It seems to be the opinion of the plaintiff in error that Waples was acting in this purchase as an agent of the United States, and binding them by his acts. Nothing could be more erroneous. Waples's functions ceased when he procured the judgment and placed the writ in the hands of the marshal. No law forbade him to purchase; and he had the same right to do so as Burbank and Stevenson, who bought a part of the property at the same sale. (See Rec., p. 20.)

Fourth. The court below did not err in directing the proceeds of the sale to be paid to Conrad, since it has been settled by the firmest authority, that purchasers at judicial sales are not bound to look beyond the judgment or decree.

McNutt *vs.* Turner, 15 Wallace, 365.
Grignon's Lessee *vs.* Astor, 2 Howard, 341.
Voorhees *vs.* Bank United States, 10 Peters, 449.
Foulke *vs.* Zimmerman, 14 Wallace, 113.

And many other cases assert the same principles. It must be admitted, then, that, although the purchasers are not parties before the court asking to have the sales confirmed, the court will have to decree concerning the sales, in order to settle the issue between the United States and Conrad. The decree will necessarily either restore the plaintiff *in error* "in all things to that which he hath lost by reason of the erroneous judgment," or take notice of the sale which appears of record, and render judgment in accordance with the foregoing cases, which will be virtually a confirmation

of the sale to the purchasers, though perhaps not in Judge Bradley's language, "ordered * * * that said sale do stand confirmed."

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